BLM Library
Denver Federal Center
Bldg. 85, OC-521
P.O. Box 25047
Denver, CO 80225

#15285916 49

D:88081662

HD
216
.C573
nos.
2600-2629

BLM Library
Denver Federal Center
Bldg. 85, OC-521
P.O. Box 25047
Denver, CO 80225

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3450

[Circular No. 2600; AA—660–87–4121–02]

Management of Existing Leases; Amendment of Inaccurate Cross-Reference

Under the authority of section 2478 of the Revised Statutes (43 U.S.C. 1201), Subpart 3451, Part 3450, Group 3400, Subchapter C, Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below.

PART 3450—[AMENDED]

1. The authority citation for Part 3450 continues to read as follows:

Authority: 30 U.S.C. 181 *et seq.;* 30 U.S.C. 351–359; 30 U.S.C. 52l–531; 30 U.S.C. 1201 *et seq.;* 42 U.S.C. 7101 *et seq.;* and 43 U.S.C. 1701 *et seq.*

§ 3451.2 [Amended]

2. Section 3451.2(e) is amended by removing from the last sentence thereof the phrase "in Part 3480 of this title" and replacing it with the phrase "in 30 CFR 218.200."

J. Steven Griles,

Assistant Secretary of the Interior.

July 27, 1987.

[FR Doc. 87–17669 Filed 8–3–87; 8:45 am]

Published in 52 F.R. 28824, August 4, 1987 - Effective August 4, 1987

Corrections

On Page 22645, in column 1, the [illegible]ced heading halfway down the column, "PART 409–MEDICARE BENEFITS, LIMITATIONS, AND EXCLUSIONS" is changed to "PART 409–HOSPITAL INSURANCE BENEFITS".

2. On the same page, in column 2, line 7, subparagraph identifier "(F)" is changed to "(i)".

3. On the same page, in column 3, each reference to "42 CFR Part 405, Subpart G" is changed to "Part 405, Subpart G of this chapter", and the reference on line 4 to "42 CFR Part 431, Subpart E." is changed to "Part 431, Subpart E of this Chapter".

(Catalog of Federal Domestic Assistance Program No. 13.774, Medicare—Supplementary Medical Assistance Program; No. 13.714, Medical Assistance Program).

Dated: July 29, 1987.

James F. Trickett,

Deputy Assistant Secretary for Administrative and Management Services.

[FR Doc. 87–17650 Filed 8–3–87; 8:45 am]

BILLING CODE 4120–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[illegible] Part 3450

[Circular No. 2600; AA—660–87–4121–02]

Management of Existing Leases; Amendment of Inaccurate Cross-Reference

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking amends 43 CFR Part 3450 regarding existing solid mineral leases to correct an inaccurate cross-reference.

ADDRESS: Any inquiries or suggestions should be sent to: Director (660), Bureau of Land Management, Room 3411 Main Interior Building, 1800 C Street, NW., Washington, DC 20240.

EFFECTIVE DATE: August 4, 1987.

FOR FURTHER INFORMATION CONTACT: Allen B. Agnew (202) 343–7722.

SUPPLEMENTARY INFORMATION: On March 4, 1985 (50 FR 8627), in a Bureau of Land Management (BLM) final rulemaking, the Department of the Interior amended 43 CFR Parts 3400, 3410, 3420, 3430, 3450, 3460, and 3470, including 43 CFR 3451.2(e), by removing all references in those parts to 30 CFR [illegible]11 and replacing them with [illegible]nces to 43 CFR Part 3480, to conform with an earlier redesignation of Minerals Management Service regulations as regulations of BLM. This rulemaking, however, contained an erroneous cross-reference in § 3451.2(e). The rulemaking of March 4, 1985, should have specifically amended 43 CFR 3451.2(e) by replacing "30 CFR Part 211" with "30 CFR 218.200" instead of "Part 3480 of this title."

The Department of the Interior has determined that because this rulemaking is a nonsubstantive, administrative action, merely correcting across-reference, it is not a major rule for purposes of E.O. 12291, and neither an environmental impact analysis nor a regulatory flexibility analysis is required. Furthermore, for the same reason, notice and public comment are unnecessary, and there is no requirement that the regulation be made effective 30 days after publication.

The principal author of this proposed rulemaking is Allen B. Agnew of the Division of Solid Mineral Operations, Bureau of Land Management, assisted by the staff of the Division of Legislation and Regulatory Management.

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 et seq.

List of Subjects in 43 CFR Part 3450

Coal, Government contracts, Intergovernmental relations, Mines, Public lands-mineral resources, Reporting and recordkeeping requirements.

Under the authority of section 2478 of the Revised Statutes (43 U.S.C. 1201), Subpart 3451, Part 3450, Group 3400, Subchapter C, Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below.

J. Steven Griles,

Assistant Secretary of the Interior.

July 27, 1987.

PART 3450—[AMENDED]

1. The authority citation for Part 3450 continues to read as follows:

Authority: 30 U.S.C. 181 *et seq.;* 30 U.S.C. 351–359; 30 U.S.C. 521–531; 30 U.S.C. 1201 *et seq.;* 42 U.S.C. 7101 *et seq.;* and 43 U.S.C. 1701 *et seq.*

§ 3451.2 [Amended]

2. Section 3451.2(e) is amended by removing from the last sentence thereof the phrase "in Part 3480 of this title" and replacing it with the phrase "in 30 CFR 218.200."

[FR Doc. 87–17669 Filed 8–3–87; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Family Support Administration

45 CFR Part 233

Coverage and Condition of Eligibility in Financial Assistance Programs

AGENCY: Family Support Administration (FSA), HHS.

ACTION: Final rule; correction.

SUMMARY: This document corrects a technical error in final regulations published in the Federal Register on March 18, 1986 (51 FR 9191–9207) to promote fiscal savings, reduce the paperwork burden and increase State flexibility in the administration of the Aid to Families with Dependent Children (AFDC) program under title IV–A, and the adult categories under titles I, X, XIV or XVI (AABD) of the Social Security Act.

EFFECTIVE DATE: March 18, 1986.

FOR FURTHER INFORMATION CONTACT: Mark Ragan, (202) 245–3290.

SUPPLEMENTARY INFORMATION: The regulation at 45 CFR 233.90(a)(1) and published March 18, 1986 (51 FR 9206, first column), contained a technical error. In revising paragraph (a)(1) in 45 CFR 233.90, the incorrect placement of the asterisks resulted in the omission of a portion of the regulatory language. By publication of this correction document, the omitted language is hereby reinstated in the regulation.

(Catalog of Federal Domestic Assistance Programs No. 13.808, Public Assistance Maintenance (State Aid)).

Dated: July 29, 1987.

James F. Trickett,

Deputy Assistant Secretary for Administrative and Management Services.

Accordingly, § 233.90 is amended to correct paragraph (a)(1) to read as follows:

§ 233.90 Factors specific to AFDC.

(a) *State plan requirements.* A State plan under title IV–A of the Social Security Act shall provide that:

(1) The determination whether a child has been deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent, or (if the State plan includes such cases) the unemployment of his or her parent who is the principal earner will be made only in relation to the child's natural or adoptive parent, or in relation to the child's stepparent who is married, under State law, to the child's natural or adoptive parent and is legally obligated

DEPT OF INTERIOR
BUREAU OF LAND MANAGEMENT
1988 JAN -8 AM 9:00
RECEIVED
MONTANA STATE OFFICE
BILLINGS, MONTANA

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3420 and 3460

[AA-650-07-4121-2410; Circular No. 2601]

Competitive Leasing and Environment; Amendments to the Federal Coal Management Program

Under the authority of the Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 *et seq.*), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*), the Surface Mining Control and Reclamation Act (30 U.S.C. 1201 *et seq.*), the Multiple Mineral Development Act (30 U.S.C. 521–531), the Department of Energy Organization Act (42 U.S.C. 7101 *et seq.*), the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), the Federal Coal Leasing Amendments Act, as amended (90 Stat. 1983–1092), and the Act of October 30, 1978 (92 Stat. 2073–2075), Parts 3420 and 3460, Group 3400, Subchapter C, Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below.

PART 3420—[AMENDED]

1. The authority citation for Part 3420 continues to read:

Authority: 30 U.S.C. 181 et seq., 30 U.S.C. 351–359; 30 U.S.C. 521–531; 30 U.S.C. 1201 et seq.; 42 U.S.C. 1701 et seq.; 43 U.S.C. 1701 et seq.; 15 U.S.C. 631–644.

§ 3420.1–4 [Amended]

2. Section 3420.1–4(e) is amended by revising paragraph (3) to read:

(3) Multiple land use decisions shall be made which may eliminate additional coal deposits from further consideration for leasing to protect other resource values and land uses that are locally, regionally or nationally important or unique and that are not included in the unsuitability criteria discussed in paragraph (e) of this section. Such values and uses include, but are not limited to, those identified in section 522(a)(3) of the Surface Mining Reclamation and Control Act of 1977 and as defined in 30 CFR 762.5. In making these multiple use decisions, the Bureau of Land Management or the surface management agency conducting the land use planning shall place particular emphasis on protecting the following: Air and water quality; wetlands, riparian areas and sole-source aquifers; the Federal lands which, if leased, would adversely impact units of the National Park System, the National Wildlife Refuge System, the National System of Trails, and the National Wild and Scenic Rivers System.

3. Section 3420.1–6 is revised to read:

§ 3420.1–6 Consultation with Federal surface management agencies.

Where a Federal surface management agency other than the Bureau of Land Management administers limited areas overlying Federal coal within the boundaries of a comprehensive land use plan or land use analysis being prepared by the Bureau of Land Management, or where the Bureau of Land Management manages lands on which coal development may impact land units of other Federal agencies, the Bureau of Land Management shall consult with the other agency to jointly determine the acceptability for further consideration for leasing of the potentially impacted lands the other agency administers or lands managed by the Bureau of Land Management that may impact lands of another agency.

PART 3460—[AMENDED]

4. The authority citation for Part 3460 continues to read:

Authority: 30 U.S.C. 181 et seq.; 30 U.S.C. 351–359; 40 U.S.C. 521–531; 30 U.S.C. 1201 et seq.; 43 U.S.C. 1701 et seq.; unless otherwise noted.

§§ 3461.2—3461.5 [Redesignated as §§ 3461.1—3461.4]

5. Sections 3461.2 through 3461.5 are renumbered §§ 3461.1 through 3461.4 and § 3461.1 is renumbered § 3461.5 and is amended by:

§ 3461.1 [Redesignated as 3461.5 and Amended]

A. Amending paragraph (a)(3) by removing the last sentence of that paragraph in its entirety;

B. Amending paragraph (c)(1) by adding immediately after the phrase *"Criterion Number 3."* the sentence "The terms used in this criterion have the meaning set out in the Office of Surface Mining Reclamation and Enforcement regulations at Chapter VII of Title 30 of the Code of Federal Regulations.";

C. Revising paragraph (e) to read:

(e)(1) *Criterion Number 5.* Scenic Federal lands designated by visual resource management analysis as Class I (an areas of outstanding scenic quality or high vessel sensitivity) but not currently on the National Register of Natural Landmarks shall be considered unsuitable.

(2) *Exception.* A lease may be issued if the surface management agency determines that surface coal mining operations will not significantly diminish or adversely affect the scenic quality of the designated area.

(3) *Exemptions.* This criterion does not apply to lands: to which the operator has made substantial legal and financial commitments prior to January 4, 1977; on which surface coal mining operations were being conducted on August 3, 1977, or which include operations on which a permit has been issued.

D. Amending paragraph (g)(1) by removing from where it appears the phrase "All publicly owned places on Federal lands which are included" and replacing it with the phrase "All publicly or privately owned places which are included";

E. Amending paragraph (h)(2) by removing paragraph (i) in its entirety and by renumbering paragraphs (ii) and (iii) as paragraphs (i) and (ii), respectively;

F. Amending paragraph (i)(1) by removing from where it appears the phrase "Federally designated critical habitat for threatened or endangered animal and plant species, and habitat" and replacing it with the phrase "Federally designated critical habitat for listed threatened or endangered plant and animal species, and habitat proposed to be designated as critical for listed threatened or endangered plant and animal species or species proposed for listing, and habitat";

G. Revising paragraph (o)(1) to read:

(o)(1) *Criteron Number 15.* Federal lands which the surface management agency and the state jointly agree are habitat for resident species of fish, wildlife and plants of high interest to the state and which are essential for maintaining these priority wildlife and

Published in 52 F.R. 46469, December 8, 1987 - Effective January 7, 1988

plant species shall be considered unsuitable. Examples of such lands which serve a critical function for the species involved include:

(i) Active dancing and strutting grounds for sage grouse, sharp-tailed grouse, and prairie chicken;

(ii) Winter ranges crucial for deer, antelope, and elk;

(iii) Migration corridor for elk; and

(iv) Extremes of range for plant species; and

H. Amending paragraph (t) by:

(1) Revising paragraph (1)(i) to read:

(i) Proposed by the State or Indian tribe located in the planning area, and; and

(2) Amending paragraph (2)(ii) by removing from where is appears the phrase "the state, the surface management agency" and replacing it with the phrase "the State or affected Indian tribe, the surface management agency".

§ 3461.2-1 [Amended]

6. Section 3461.2-1(b)(1), formerly § 2461.3-1, is revised to read:

(b)(1) The authorized officer shall make his/her assessment on the best available data that can be obtained given the time and resources available to prepare the plan. The comprehensive land use plan or land use analysis shall include an indication of the adequacy and reliability of the data involved. Where either a criterion or exception (when under paragraph (a) of this section the authorized officer decides that application of an exception is appropriate) cannot be applied during the land use planning process because of inadequate or unreliable data, the plan or analysis shall discuss the reasons therefor and disclose when the data needed to make an assessment with reasonable certainty would be generated. It the case of Criterion 19, application shall be made before approval of the mining permit. In the case of other deferred criteria, application shall be made prior to finalizing the environmental analysis for the area being studied for coal leasing. The authorized officer shall make every effort within the time and resources available to collect adequate and reliable data which would permit the application of Criterion 19 in the land use or activity planning process. When those data are obtained, the authorized officer shall make public his/her assessment on the application of the criterion or, if appropriate, the exception and the reasons therefor and allow opportunity for public comment on the adequacy of the application as required by paragraph (a)(2) of this section.

J. Steven Griles,
Assistant Secretary of the Interior.
September 30, 1987.

[FR Doc. 87-28117 Filed 12-7-87; 8:45 am]

that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981. GSA decisions are based on adequate information concerning the need for and the consequences of the rule. The rule is written to ensure maximum benefits to Federal agencies. This Governmentwide management regulation will have little or no cost effect on society. The temporary rule is therefore not likely to have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

List of Subjects in 41 CFR Parts 201–1, 201–2, 201–23, and 201–24

Computer technology, Government procurement, Government property management. Information resources activities, Competition.

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c) and sec. 101(f), 100 Stat. 1783–345; 40 U.S.C. 751(f).

In 41 CFR Chapter 201, FIRMR Temporary Regulation 13, Supplement 1 is added to Appendix A at the end of the chapter.

[FIRMR Temp. Reg. 13; Supplement]

November 10, 1987

To: Heads of Federal agencies

Subject: FIRMR Implementation of the "Paperwork Reduction Reauthorization Act of 1986" (Title VIII, Public Law 99–500)

1. *Purpose.* This supplement extends the expiration date of FIRMR Temporary Regulation 13 for one additional year. Accordingly, the comment period is also extended to January 7, 1988. This extension will permit additional comments to be incorporated into a proposed codification amendment and continue temporary implementation of the subject statute.

2. *Effective date.* This regulation is effective December 23, 1987.

3. *Expiration date.* The expiration date of this temporary regulation is extended from December 23, 1987, to December 23, 1988.

T.C. Golden,

Administrator of General Services.

[FR Doc. 87–28059 Filed 12–7–87; 8:45 am]

BILLING CODE 6820–25–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3420 and 3460

[AA–650–07–4121–2410; Circular No. 2601]

Competitive Leasing and Environment; Amendments to the Federal Coal Management Program

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking is designed to clarify or modify those sections of the Federal coal management program regulations related to multiple use decisions involving coal and certain of the 20 different coal unsuitability criteria and their application during the Bureau of Land Management's land use planning process. The changes made by the final rulemaking arise from the Office of Technology Assessment's study of the Federal coal management program's treatment of environmental issues, and from the Secretary of the Interior's decisions of February 1986 on the Federal coal leasing program.

EFFECTIVE DATE: January 7, 1988.

ADDRESS: Inquiries or suggestions should be sumitted to: Director (650), Bureau of Land Management, Room 3610, Main Interior Bldg., 1800 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Carole Smith, (202) 343–6821.

SUPPLEMENTARY INFORMATION: A proposed rulemaking that would amend certain of the procedures by which land use planning is conducted for coalbearing Federal lands was published in the Federal Register on May 15, 1987 (52 FR 18404). During the 30-day comment period provided in the proposed rulemaking, ten comments were received: Five from Federal agencies; two from industry trade associations; one from a private advocacy group; one from an association of local governments; and one from an environmental group. The comments covered all aspects of the proposed rulemaking and are discussed below.

General Comments

Four comments were received that covered what they perceived as the overall effect of the proposed rulemaking. Three of these four comments expressed the view that the proposed rulemaking did not provide adequate protection for sensitive resources and their environmental values and uses, such as wetlands and units of the National Park System and failed to ensure reclaimability for sensitive areas. These comments requested that the final rulemaking include additional unsuitability criteria covering wetlands, units of the National Park System and reclaimability. The fourth comment on the proposed rulemaking expressed the view that the existing regulations unduly restricted coal development on the public lands and that this restriction endangered the United States economy, national security, and the national energy program. This comment requested that the final rulemaking provide a process for the reinstatement of coalbearing lands later in the coal leasing process if dropping them from further consideration for coal leasing during land use planning was later found to be unjustified. This comment also requested that coal lessees be guaranteed the right to develop a lease which had been finalized through the complex and lengthy regional coal leasing process mandated by the existing regulations.

The final rulemaking does not add any new coal unsuitability criteria. The Secretary of the Interior reviewed the arguments in favor of establishing new criteria during the decision process and decided against the addition of any new criteria. No new reasons were presented in the comments on the proposed rulemaking that would justify having the Secretary revisit the decision not to add any new criteria. Thus, the final rulemaking reflects the Secretary's February 1986 decision on this issue.

The final rulemaking has not adopted the request in one of the comments that a process be added to the existing regulations under which coalbearing lands dropped from further consideration for coal leasing during land use planning could later be reinstated during regional coal activity planning. A similar comment was considered in connection with the discussion of whether or not to reinstate thresholds in the Federal coal management regulations (See Appendix IV of the Secretarial Issue Document—Federal Coal Management Program, February 1986 and 51 FR 18884). The comment presented no evidence that the U.S. economy was being harmed by the current level of coal leasing, nor has the Department of the Interior received any evidence that the current land use planning process is unnecessarily restricting the amount of Federal coal available for lease.

The reasons that the Department of the Interior cannot guarantee Federal coal lessees the right to develop their leases have been fully discussed in previous rulemaking documents (See 51 FR 18884, 18885–18886) and no purpose would be served to discuss this issue again.

One other general comment on the proposed rulemaking was received. The comment was concerned about what it believed was the Department of the Interior's superficial and inadequate analysis of valid criticisms of the way in which the unsuitability criteria in the existing regulations are being applied.

The comment suggested that an environmental impact statement should be prepared to analyze the revisions made by the proposed rulemaking before those changes are adopted in a final rulemaking.

The analyses upon which the proposed rulemaking is based are adequate for the publication of this final rulemaking. These analyses include the Final Supplement to the Federal Coal Management Program Environmental Impact Statement (October 1985) and the Secretarial Issue Document (February 1986). The Department of the Interior is of the view that these analyses are an adequate basis for the Secretary's decisions of February 1986. Implementation of the criteria is being addressed in the supplemental program guidance for land use planning. If, in the future, it is determined that further revisions of the regulations concerning the unsuitability criteria are needed, the Department will propose them for public review and comment. Any future changes in the regulations will be based on the experience gained in implementing the revised regulations, just as the proposed rulemaking that is the basis of this final rulemaking was issued after a study of the application of the unsuitability criteria contained in the coal management regulations of 1979 and 1982.

Multiple Use Screen (43 CFR 3420.1–4(e))

In accordance with the February 1986 decisions of the Secretary of the Interior, the proposed rulemaking would modify section 3420.1–4(e) of the existing regulations to increase the number of factors receiving increased emphasis during the multiple use tradeoff screen of land use planning. Two comments on this section of the proposed rulemaking suggested that the list of areas that are to receive increased emphasis be increased by the final rulemaking to include municipal watersheds, fragile and historic lands, renewable resource lands, and natural hazard lands. The final rulemaking has not adopted this suggested change. Municipal watersheds are already protected by criterion number 17 (See 43 CFR 3461.1(q)(1)), and adding this item to those areas that are to receive increased emphasis during the multiple use tradeoff screen would be redundant and confusing. Further, fragile, historic, renewable resource, and natural hazard lands are already considered as part of the multiple use tradeoff screen at a level commensurate with their significance in each case.

The areas suggested in the comment have not been added to the list by the final rulemaking because these areas also can be protected at later stages in the coal leasing process as well as during land use planning. It is not clear that the only way to mitigate impacts to these areas is not to lease them in the first place. During the preparation of regional coal leasing environmental impact statements, mitigating measures may be developed which would allow these areas to be further considered for leasing without sacrificing inherent values in the lands.

One comment on this section was of the view that the adding of factors for increased emphasis during the multiple use tradeoff screen had the effect of adding new unsuitability criteria to the regulations. The final rulemaking adopts the provision of the proposed rulemaking that adds factors for increased emphasis during the multiple use tradeoff screen because the tradeoff screen preserves the discretion of the authorized officer to balance the competing resources. If these had been added as unsuitability criteria, the authorized officer's discretion would have been significantly limited.

Joint Determination (43 CFR 3420.1–6)

The proposed rulemaking would require the Bureau of Land Management to jointly determine with other affected surface management agencies the acceptability of the Bureau's lands for further consideration for coal leasing if mining on those lands could affect the other agency's lands. The proposed rulemaking also requested public comments on the feasibility of implementing the joint determination process through memoranda of understanding. Five comments were submitted on this proposal.

One comment supported using memoranda of understanding to implement the joint determination process, with the other four comments opposed to this concept. Two of the four opposing comments expressed the view that the joint determination process did not go far enough because it did not provide special protection for lands in the National Park System. One of these two comments suggested that the final rulemaking should describe the procedures by which the joint determination process would be conducted. The two other comments that opposed the use of memoranda of understanding did so for different reasons, with one of them suggesting that it was a violation of the multiple use management mandate of the Federal Land Policy and Management Act of 1976. The other comment expressed the view that the proposal was not needed because other surface management agencies were adequately consulted during land use planning when their lands were affected.

The final rulemaking has not adopted any of the suggested changes and retains the language of the proposed rulemaking in § 3420.1–6. The Bureau of Land Management will work closely with the other affected surface management agency or agencies in an effort to resolve differences. If, after thorough negotiations, the issues cannot be resolved between the agencies, they will be resolved through the established issue resolution mechanism of the Department of the Interior.

The proposed joint determination requirement set forth in the proposed rulemaking provides adequate protection for lands in the National Park System and for other sensitive lands. Both the proposed and final rulemakings reflect one of the decisions of the Secretary of the Interior (Number 3), which was designed to protect sensitive environmental values and lands, such as lands in the National Park System, from the adverse effects of coal leasing. The comments on this provision of the proposed rulemaking did not give examples of any instance in which lands in the National Park System have been damaged by the Bureau of Land Management's existing land use planning procedures. Adding the provision for joint determination to the coal leasing regulations will provide an additional step that will be used to protect sensitive lands such as those in the National Park System.

The joint determination provision of the proposed rulemaking does not violate the multiple use mandate of the Federal Land Policy and Management Act. While the Federal Land Policy and Management Act gives the Bureau of Land Management the statutory basis under which it carries out its responsibilities and programs, it is only one of many statutes with which the Bureau must comply. In meeting its responsibilities, the Bureau of Land Management also must comply with the provisions of the clean air and water quality statutes and the National Environmental Policy Act. The Bureau also must consult with other surface management agencies to determine that its activities harmonize, insofar as possible, with the activities of these agencies. The joint determination provision was designed to assist the Bureau in fulfilling these other responsibilities. Even though one of the surface management agencies with whom the Bureau consults in carrying out its responsibilities continues to express concern about being left out of the process that leads to the decision of

how much coal and which coal tracts should be offered for lease, the Secretary of the Interior has determined that the joint determination provision contained in the proposed rulemaking adequately mitigates this concern, and the final rulemaking has adopted the provision without change.

Three comments were received in response to the request in the proposed rulemaking for comments on using memoranda of understanding in lieu of the joint determination provision. One of the comments supported the use of memoranda of understanding, but cautioned that effective implementation was necessary for this process to be effective. The other two comments did not support the use of memoranda of understanding because of their view that an existing memorandum of understanding between the Bureau of Land Management and the National Park Service was vague and non-specific as to details of how the unsuitability determinations would be made. These comments were of the view that the only way to truly protect the interest of another surface management agency was to include the determination process in the regulations.

After carefully reviewing the comments on the issue of memoranda of understanding, the Department of the Interior decided to implement the determination process through inclusion of its provision in the final rulemaking. This decision does not change the Bureau's position that memoranda of understanding are useful in providing guidelines for consultation and cooperation among surface management agencies, and the Bureau will continue to use them in carrying out its programs.

General Comments on Proposed Revisions to the Unsuitability Criteria

Two comments raised concerns about the Bureau of Land Management's use of exceptions and exemptions to the unsuitability criteria, with one of the comments expressing the view that the Bureau uses the exceptions and exemptions to allow far too much acreage to be given further consideration for coal leasing. This comment went on to suggest changing the existing practice of considering those lands suitable pending further study to a practice of considering such lands unsuitable pending further study. The other comment supported the use of the exceptions and exemptions because the land use planning process dropped out too much land for consideration for further leasing with no opportunity for reinstating those lands until the next round of regional activity planning, usually about 4 years later.

The Department of the Interior continues to support the use of exceptions and exemptions to specific unsuitability criteria. Exemptions, where they apply to specific unsuitability criteria, are granted by statute and constitute valid existing rights. Exceptions are applied to unsuitability criteria in cases where inadequate data exist to determine what impacts might occur if general areas of lands containing coal deposits were leased. During the environmental analysis process, when specific parcels of coalbearing lands are analyzed, impacts to the resource covered by the unsuitability criteria can be studied. If the studies show that the impacts to the resources cannot be mitigated acceptably, the lands will be dropped from further consideration for leasing. While the Department does not condone the indiscriminate use of exceptions during land use planning, there are many opportunities later in the coal leasing process to eliminate lands which are not acceptable for leasing. Finally, this comment is factually incorrect in one respect. Lands which have been dropped from further consideration for leasing under the Federal coal management program are dropped from further consideration not just for one round of regional activity planning but until the land use plan itself is reviewed and updated.

Criterion 2 (43 CFR 3461.1(b))

One comment supported the change made by the proposed rulemaking to criterion 2, while another comment disagreed with the proposed revision which would add an exception to criterion 2 making rights-of-way and easements granted after a land use plan was approved subject to being moved in order to facilitate the mining of coal. The comment that opposed the change was of the view that rights-of-way and easements were property rights that should be protected from later activities, such as coal mining. Even if it is assumed that a right-of-way or easement across public lands are property rights, the "right" would be defined according to the limitations or qualifications places on the right-of-way or easement when it is issued. Nevertheless, the holders of those rights-of-way and easements may have spent considerable sums of money in exercising their rights under the right-of-way or easement. Nevertheless, upon careful consideration of this issue, the Department has determined that the final rulemaking will not adopt this provision of the proposed rulemaking. Current land use plans identify several categories of lands for right-of-way purposes, among them lands preferred for right-of-way corridors, areas where rights-of-way are excluded as a use, and areas where rights-of-way would be granted only if there were no alternative. Land managers can work within these categories and notify right-of-way and easement holders of any possible uses that might interfere with the lands being used for a right-of-way or easement. If Federal coal leasing becomes feasible for an area containing a right-of-way or easement, the situation will be worked out on a case-by-case basis, taking into account the requirements of the resource management plan and other relevant factors.

Criterion 9 (43 CFR 3461.1(i))

One comment raised questions concerning the legality of the provision in the proposed rulemaking that would have changed this criterion, while another comment stated that the existing criterion gave adequate protection to threatened and endangered species and their critical habitat. The change would add species proposed as threatened or endangered species and their proposed critical habitats to those threatened and endangered species and designated critical habitats already covered by the criterion. The comment that raised questions concerning the legality of the proposed change also expressed the view that the proposed change was arbitrary and capricious. The proposed change to criterion 9 is not arbitrary, capricious, or illegal. The proposed change arose from concerns about the length of the process by which threatened and endangered species are designated and their habitats determined to be critical. The designation process is managed by the U.S. Fish and Wildlife Service. During the study process, which may take several years, other Federal agencies are proceeding with their mandated programs, some of which may affect the animal and plant species under study. The change in the proposed rulemaking was designed to protect these "study" species and their habitats. Although the Bureau of Land Management consults with the Fish and Wildlife Service during land use planning, the task group studying the application of this unsuitability criterion recommended that the criterion be amended as provided in the proposed rulemaking. The final rulemaking has adopted the provision of the proposed rulemaking without change.

Criterion 15 (43 CFR 3461.1(o))

Two comments were received on the change made by the proposed rulemaking to criterion 15. The change would expand the criterion to include sensitive plant species and would give examples of the types of plant species that might qualify as "sensitive." One comment took issue with the example provided in the proposed rulemaking, that of extreme range. The comment expressed the view that the inclusion of sensitive plants and the example given went beyond the mandate of the Endangered Species Act and would have adverse impacts on coal leasing. The second comment expressed the view that the change contained in the proposed rulemaking was not needed and that the concerns addressed by the proposed rulemaking could be resolved through mitigation measures later in the process.

The change made by the proposed rulemaking was not intended to conform to the requirements of the Endangered Species Act, but to respond to a desire on the part of some conservation groups to recognize certain plant species that did not qualify as either threatened or endangered but, nevertheless, were unique or sensitive in portions of their range because of location, local conditions, or other factors. The term "extremes of range" was meant to describe the condition of a plant species being at the limit of its growing conditions. Such a plant species would be "sensitive" to changes in the environment, whether those changes were natural or man-made. Further, the application of the revised criterion would not necessarily exclude the lands containing the plant species from further consideration for coal leasing, as impacts to the sensitive species might be mitigated. The final rulemaking has adopted the change to criterion 15 made by the proposed rulemaking.

Criterion 20 (43 CFR 3461.1(t)(1))

Three comments objected to the change made by the proposed rulemaking to criterion 20 which allow Indian tribes to recommend new unsuitability criteria to the Secretary of the Interior. Two comments were of the view that the change was not necessary because the Bureau of Land Management consulted with Indian tribes when those tribes were affected by Federal coal leasing activities. The other comment was concerned that the Secretary would adopt unsuitability criteria recommended by an Indian tribe without providing an opportunity for public review and comment.

All groups and individuals, including Indian tribes, are provided the opportunity to recommend unsuitability criteria to the Secretary of the Interior under the Special Rulemaking provision in 43 CFR Part 14. These provisions allow the Secretary to accept petitions from the public for new regulatory provisions, waivers of regulations, or modifications of existing regulations. The change made by the proposed rulemaking merely recognizes this opportunity in the context of the coal management program. The existing regulations require that a recommendation by the State may be adopted only through the rulemaking process. Thus, the change by the proposed rulemaking is adopted and if an Indian tribe recommends new unsuitability criteria to the Secretary, the Secretary must seek public comment on the recommendation as part of the rulemaking process before deciding whether to adopt or reject it. The final rulemaking has adopted this provision of the proposed rulemaking.

The principal author of this final rulemaking is Carole Smith, Division of Solid Mineral Leasing, Bureau of Land Management, assisted by the staff of the Division of Legislation and Regulatory Management, Bureau of Land Management, and the staff of the Office of the Solicitor, Department of the Interior.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

The changes made by this final rulemaking will not affect small entities to any greater or lesser extent than any other entities interested in obtaining Federal coal leases. The changes affect the Federal government by imposing higher standards for use in determining whether coalbearing public lands clear the land use planning process. The changes ideally will result in making coal that can be mined economically and in an environmentally safe manner available to individuals and groups interested in obtaining Federal coal leases and to the public which consumes the coal in meeting its energy needs.

The information collection requirements for 43 CFR Group 3400 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned approval number 1004–0073.

List of Subjects

43 CFR Part 3420

Administrative practice and procedure, Coal, Government contracts, Intergovernmental relations, Mines, Public lands—mineral resources, Reporting and recordkeeping requirements.

43 CFR Part 3460

Coal, Environmental protection, Government contracts, Mines, Public lands—mineral resources.

Under the authority of the Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 *et seq.*), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*), the Surface Mining Control and Reclamation Act (30 U.S.C. 1201 *et seq.*), the Multiple Mineral Development Act (30 U.S.C. 521–531), the Department of Energy Organization Act (42 U.S.C. 7101 *et seq.*), the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), the Federal Coal Leasing Amendments Act, as amended (90 Stat. 1983–1092), and the Act of October 30, 1978 (92 Stat. 2073–2075), Parts 3420 and 3460, Group 3400, Subchapter C, Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below.

J. Steven Griles,

Assistant Secretary of the Interior.

September 30, 1987.

PART 3420—[AMENDED]

1. The authority citation for Part 3420 continues to read:

Authority: 30 U.S.C. 181 et seq., 30 U.S.C. 351–359; 30 U.S.C. 521–531; 30 U.S.C. 1201 et seq.; 42 U.S.C. 1701 et seq.; 43 U.S.C. 1701 et seq.; 15 U.S.C. 631–644.

§ 3420.1-4 [Amended]

2. Section 3420.1–4(e) is amended by revising paragraph (3) to read:

(3) Multiple land use decisions shall be made which may eliminate additional coal deposits from further consideration for leasing to protect other resource values and land uses that are locally, regionally or nationally important or unique and that are not included in the unsuitability criteria discussed in paragraph (e) of this section. Such values and uses include, but are not limited to, those identified in section 522(a)(3) of the Surface Mining Reclamation and Control Act of 1977 and as defined in 30 CFR 762.5. In making these multiple use decisions, the Bureau of Land Management or the

surface management agency conducting the land use planning shall place particular emphasis on protecting the following: Air and water quality; wetlands, riparian areas and sole-source aquifers; the Federal lands which, if leased, would adversely impact units of the National Park System, the National Wildlife Refuge System, the National System of Trails, and the National Wild and Scenic Rivers System.

3. Section 3420.1–6 is revised to read:

§ 3420.1–6 Consultation with Federal surface management agencies.

Where a Federal surface management agency other than the Bureau of Land Management administers limited areas overlying Federal coal within the boundaries of a comprehensive land use plan or land use analysis being prepared by the Bureau of Land Management, or where the Bureau of Land Management manages lands on which coal development may impact land units of other Federal agencies, the Bureau of Land Management shall consult with the other agency to jointly determine the acceptability for further consideration for leasing of the potentially impacted lands the other agency administers or lands managed by the Bureau of Land Management that may impact lands of another agency.

PART 3460—[AMENDED]

4. The authority citation for Part 3460 continues to read:

Authority: 30 U.S.C. 181 et seq.; 30 U.S.C. 351–359; 40 U.S.C. 521–531; 30 U.S.C. 1201 et seq.; 43 U.S.C. 1701 et seq.; unless otherwise noted.

§§ 3461.2—3461.5 [Redesignated as §§ 3461.1—3461.4]

5. Sections 3461.2 through 3461.5 are renumbered §§ 3461.1 through 3461.4 and § 3461.1 is renumbered § 3461.5 and is amended by:

§ 3461.1 [Redesignated as 3461.5 and Amended]

A. Amending paragraph (a)(3) by removing the last sentence of that paragraph in its entirety;

B. Amending paragraph (c)(1) by adding immediately after the phrase *"Criterion Number 3."* the sentence "The terms used in this criterion have the meaning set out in the Office of Surface Mining Reclamation and Enforcement regulations at Chapter VII of Title 30 of the Code of Federal Regulations.";

C. Revising paragraph (e) to read:

(e)(1) *Criterion Number 5.* Scenic Federal lands designated by visual resource management analysis as Class I (an areas of outstanding scenic quality or high vessel sensitivity) but not currently on the National Register of Natural Landmarks shall be considered unsuitable.

(2) *Exception.* A lease may be issued if the surface management agency determines that surface coal mining operations will not significantly diminish or adversely affect the scenic quality of the designated area.

(3) *Exemptions.* This criterion does not apply to lands: to which the operator has made substantial legal and financial commitments prior to January 4, 1977; on which surface coal mining operations were being conducted on August 3, 1977, or which include operations on which a permit has been issued.

D. Amending paragraph (g)(1) by removing from where it appears the phrase "All publicly owned places on Federal lands which are included" and replacing it with the phrase "All publicly or privately owned places which are included";

E. Amending paragraph (h)(2) by removing paragraph (i) in its entirety and by renumbering paragraphs (ii) and (iii) as paragraphs (i) and (ii), respectively;

F. Amending paragraph (i)(1) by removing from where it appears the phrase "Federally designated critical habitat for threatened or endangered animal and plant species, and habitat" and replacing it with the phrase "Federally designated critical habitat for listed threatened or endangered plant and animal species, and habitat proposed to be designated as critical for listed threatened or endangered plant and animal species or species proposed for listing, and habitat";

G. Revising paragraph (o)(1) to read:

(o)(1) *Criteron Number 15.* Federal lands which the surface management agency and the state jointly agree are habitat for resident species of fish, wildlife and plants of high interest to the state and which are essential for maintaining these priority wildlife and plant species shall be considered unsuitable. Examples of such lands which serve a critical function for the species involved include:

(i) Active dancing and strutting grounds for sage grouse, sharp-tailed grouse, and prairie chicken;

(ii) Winter ranges crucial for deer, antelope, and elk;

(iii) Migration corridor for elk; and

(iv) Extremes of range for plant species; and

H. Amending paragraph (t) by:

(1) Revising paragraph (1)(i) to read:

(i) Proposed by the State or Indian tribe located in the planning area, and; and

(2) Amending paragraph (2)(ii) by removing from where is appears the phrase "the state, the surface management agency" and replacing it with the phrase "the State or affected Indian tribe, the surface management agency".

§ 3461.2–1 [Amended]

6. Section 3461.2–1(b)(1), formerly § 2461.3–1, is revised to read:

(b)(1) The authorized officer shall make his/her assessment on the best available data that can be obtained given the time and resources available to prepare the plan. The comprehensive land use plan or land use analysis shall include an indication of the adequacy and reliability of the data involved. Where either a criterion or exception (when under paragraph (a) of this section the authorized officer decides that application of an exception is appropriate) cannot be applied during the land use planning process because of inadequate or unreliable data, the plan or analysis shall discuss the reasons therefor and disclose when the data needed to make an assessment with reasonable certainty would be generated. It the case of Criterion 19, application shall be made before approval of the mining permit. In the case of other deferred criteria, application shall be made prior to finalizing the environmental analysis for the area being studied for coal leasing. The authorized officer shall make every effort within the time and resources available to collect adequate and reliable data which would permit the application of Criterion 19 in the land use or activity planning process. When those data are obtained, the authorized officer shall make public his/her assessment on the application of the criterion or, if appropriate, the exception and the reasons therefor and allow opportunity for public comment on the adequacy of the application as required by paragraph (a)(2) of this section.

[FR Doc. 87–28117 Filed 12–7–87; 8:45 am]

BILLING CODE 4310–84–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

Changes in Flood Elevation Determinations; Arkansas et al.

AGENCY: Federal Insurance Administration, Federal Emergency Management Agency.

ACTION: Final rule.

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3560

[AA-650-08-4133-02-2410; Circular No. 2602]

Hardrock Minerals; Final Action To Correct Latent Ambiguity

AGENCY: Bureau of Land Management, Interior.

ACTION: Final action to correct latent ambiguity.

SUMMARY: The Bureau of Land Management has become aware of the existence of a latent ambiguity in the renewal terms applicable to a limited number of hardrock leases issued by the Bureau after October 9, 1964, on Lease Form 4–1100 (dated September 1962). In an effort to resolve the problems caused by this ambiguity, the Bureau will offer to give the holders of the affected hardrock leases an opportunity to elect to obtain a one-time renewal of the lease term identical to that of the term granted in the original lease, 20 years, with all subsequent renewals to be for a term of ten years, the requirement in the existing hardrock leasing regulations. This one-time renewal will be in lieu of the normal for a term of 10 years applicable to other hardrock leases (43 CFR 3561.3).

EFFECTIVE DATE: January 19, 1988.

ADDRESS: Any inquiries or suggestions should be sent to: Director (650), Bureau of Land Management, Room 3610, Main Interior Bldg., 1800 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Mary Linda Ponticelli, (202) 343–3258.

SUPPLEMENTARY INFORMATION: A proposed action to correct the latent ambiguity in a small number of hardrock leases was published in the Federal Register on August 21, 1987 (52 FR 31643), with a 30-day comment period. One comment was received and it expressed support for the action.

For hardrock leases issued prior to October 9, 1964, the then current regulations provided for a lease term of 5 or 10 years with a right to renew the lease "for successive periods of like duration." (43 CFR 200.37(f)). The language providing for renewal "for successive periods of like duration" was included in Lease Form 4–1100 (dated September 1962). In 1963, 43 CFR 200.37(f) was rewritten and renumbered as 43 CFR 3221.4(f). In October 1964, 43 CFR 3221.4(f) was amended to provide for a normal lease term not to exceed 20 years for hardrock leases, with renewals to be for a term not to exceed 10 years.

An ambiguity arose when the Bureau of Land Management issued approximately 7 hardrock leases after the effective date of the October 1964 amendment to 43 CFR 3221.4(f) using Lease Form 4–1100 (dated September 1962), which Form continued to use for renewal purposes the language "for successive periods of like duration in accordance with regulation 43 CFR 200.37(f)." This language appeared to grant a lessee the right to renew a lease for a period of 20 years, the initial term of hardrock leases granted after the October 1964 revision of the hardrock leasing regulations. Later versions of Lease Form 4–1100 corrected the language relating to the renewal term to bring it into compliance with the provisions of 43 CFR 3221.4(f), as amended, making it clear that the renewal of a hardrock lease could be for a term not to exceed 10 years. Currently, the renewal limitation on hardrock leases is contained in 43 CFR 3561.3.

When this final action becomes effective, the holders of the seven or so leases that are affected by this ambiguity will be given the opportunity to request that their leases be renewed once for a period of 20 years, rather than the 10 years required by 43 CFR 3561.3 of the existing regulations, with all subsequent renewals to be for the term required by the existing regulations. Therefore, the holders of these seven or so hardrock leases should, if they desire an initial renewal term of 20 years, file a request with the appropriate State Office of the Bureau of Land Management, citing this Action document and requesting a renewal of their hardrock lease for a 20-year term.

The principal author of this final action document is Mary Linda Ponticelli, Division of Solid Mineral Leasing, Bureau of Land Management, assisted by the staff of the Division of Legislation and Regulatory Management, Bureau of Land Management, and the staff of the Office of the Solicitor, Department of the Interior.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

This action document will directly affect only approximately seven hardrock leases. The effect of the action will be equally applicable to all of the affected leases, regardless of the size of the entity holding them.

There are no information collection requirements contained in this Action document requiring the approval of the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects 43 CFR Part 3560

Government contracts, Mineral royalties, Public lands—mineral resources, Surety bonds.

This final action is carried out under the authority of Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.), including the Act of February 7, 1927 (30 U.S.C. 281–287); the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359); section 402 of Reorganization Plan No. 3 of 1946 (5 U.S.C. Appendix) as it relates to the Act of March 4, 1917 (16 U.S.C. 520); Title II of the National Industrial Recovery Act of June 16, 1933 (40 U.S.C. 401, 403(a) and 406); the 1935 Emergency Relief Appropriations Act of April 8, 1935 (48 Stat. 115, 118); section 55 of Title I of the Act of August 24, 1935 (49 Stat. 750, 781); the Act of July 22, 1937 (50 Stat. 522, 525, 530), as amended by the Act of July 28, 1942 (7 U.S.C. 1011(c), 1018) and section 3 of the Act of June 28, 1952 (66 Stat. 285); section 3 of the Act of September 1, 1949 (30 U.S.C. 192c); the Act of June 30, 1950 (16 U.S.C. 508(b)); the Act of June 8, 1926 (30 U.S.C. 291–293); the Act of March 3, 1933 (47 Stat. 1487), as amended by the Act of June 5, 1936 (49 Stat. 1482) and the Act of June 29, 1936 (49 Stat. 2026); section 10 of the Act of August 4, 1939 (43 U.S.C. 387) as it relates to the Act of October 8, 1964 (16 U.S.C. 460n et seq.); the Act of November 8, 1965 (16 U.S.C. 460q et seq.); the Act of October 1, 1968 (16 U.S.C. 90c et seq.); the Act of October 17, 1972 (16 U.S.C. 460dd et seq); section 6 of the Act of November 8, 1965 (16 U.S.C. 460q et seq.) as it relates to section 3 of the Act of September 1, 1949 (30 U.S.C. 192(c)); sections 403, 404, and 1312 of the Alaska National Interest Lands Conservation Act (16 U.S.C. 460mm–4) as it relates to section 10 of the Act of August 4, 1939, as amended (43 U.S.C. 387); the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.); and the Independent Offices Appropriation Act (31 U.S.C. 9701).

J. Steven Griles,

Assistant Secretary of the Interior.

November 25, 1987.

[FR Doc. 87–29024 Filed 12–17–87; 8:45 am]

BILLING CODE 4310–84–M

regulatory rulemaking are cable to all persons or entities who ess a grazing permit on National Forest or Land Utilization Project lands in the 16 Western States, without regard to the size of the operation.

An environmental analysis has been conducted by the Forest Service on this action and is available for public review in the office of the Director, Range Management Staff, Washington, DC. The analysis addresses issues discussed in "The Grazing Fee Review and Evaluation: A Report From the Secretary of Agriculture and the Secretary of the Interior," February, 1986, Washington, DC, 99 pp., available from the Director, Range Management, USDA Forest Service, Room 601 RP–E, P.O. Box 96090, Washington, DC 20090–6090. It specifically addresses:

1. Questions concerning the formula's methodology;
2. Effects on government revenues for range improvements;
3. Cost of the grazing program;
4. Equitability between permittees and nonpermittees; and
5. Potential environmental effects.

Based on the environmental assessment, it has been determined that regulatory action will not have a icant effect on the human ronment.

Information Collection Requirements.

There are no additional informaion collection requirements because of the final rulemaking.

List of Subjects in 36 CFR Part 222

Grazing lands, Livestock, National forests, Range management, Wildlife.

Therefore, for the reasons set forth above, Title 36 of the Code of Federal Regulations, Part 222, Subpart C—Grazing Fees, is amended as follows:

PART 222—[AMENDED]

1. The authority citation for Subpart C is revised to read as follows:

Authority: 16 U.S.C. 551; 31 U.S.C. 483A; 43 U.S.C. 1901; E.O. 12548, 51 FR 1986 Comp., p. 188.

2. Section 222.50 is amended by revising paragraph (c) to read as follows:

§ 222.50 General procedures.

* * * * *

(c) A grazing fee shall be charged for each head month of livestock grazing or use. A head month is a month's use and occupancy of range by one animal, pt for sheep or goats. A full head h's fee is charged for a month of zing by adult animals; if the grazing animal is weaned or 6 months of age or older at the time of entering National Forest System lands; or will become 12 months of age during the permitted period of use. For fee purposes 5 sheep or goats, weaned or adult, are equivalent to one cow, bull, steer, heifer, horse, or mule.

* * * * *

3. Section 222.51 is amended by revising paragraph (b) and removing paragraph (c), to read as follows:

§ 222.51 National Forests in 16 Western States.

* * * * *

(b) Notwithstanding the provisions of § 222.50, paragraph (b), the calculated grazing fee for 1988 and subsequent grazing fee years represents the economic value of the use of the land to the user and is the product of multiplying the base fair market value of $1.23 by the result of the annual Forage Value Index, added to the sum of the Beef Cattle Price Index minus the Prices Paid Index and divided by 100; provided, that the annual increase or decrease in such fee for any given year shall be limited to not more than plus or minus 25 percent of the previous year's fee, and provided further, that the fee shall not be less than $1.35 per head per month. The indexes used in this formula are as follows:

(1) Forage Value Index means the weighted average estimate of the annual rental charge per head per month for pasturing cattle on private rangelands in the 11 Western States (Arizona, California, Colorado, Idaho, Montana, New Mexico, Nevada, Oregon, Utah, Washington, and Wyoming) (computed by the National Agricultural Statistics Service) from the June Enumerative Survey) divided by $3.65 per head month and multiplied by 100;

(2) Beef Cattle Price Index means the weighted average annual selling price for beef cattle (excluding calves) in the 11 Western States (Arizona, California, Colorado, Idaho, Montana, New Mexico, Nevada, Oregon, Utah, Washington, and Wyoming) (computed by the National Agricultural Statistics Service) for November through October (computed by the National Agricultural Statistics Service) divided by $22.04 per hundred weight and multiplied by 100; and

(3) Prices Paid Index means the following selected components from the National Agricultural Statistics Service "Annual National Index of Prices Paid by Farmers for Goods and Services" adjusted by the weights indicated in parentheses to reflect livestock production costs in the Western States:

1. Fuels and Energy (14.5);
2. Farm and Motor Supplies (12.0);
3. Autos and Trucks (4.5);
4. Tractors and Self-Propelled Machinery (4.5);
5. Other Machinery (12.0);
6. Building and Fencing Materials (14.5);
7. Interest (6.0);
8. Farm Wage Rates (14.0);
9. Farm Services (18.0).

Date: January 27, 1988.

Richard E. Lyng,

Secretary of Agriculture.

[FR Doc. 88–2085 Filed 2–1–88; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Circular No. 2602; AA–220–88–4322–02]

43 CFR Part 4100

Grazing Administration; Exclusive of Alaska; Grazing Fees for 1988

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking and notice of Grazing Fee for 1988.

SUMMARY: This final rulemaking amends the regulations in 43 CFR Part 4100 Subpart 4130.7 concerning the determination of grazing fees for grazing domestic livestock on public land administered by the Bureau of Land Management (BLM). These regulations were issued by the Department of the Interior as proposed rulemaking and published in the Federal Register on October 7, 1987 (52 FR 37485) with a public comment period of 45 days.

Four thousand seven hundred and thirty-eight responses were received during the comment period and considered during the development of this final rulemaking. This final rulemaking amends the regulations in 43 CFR Part 4100 Subpart 4130.7 by providing that fees for grazing domestic livestock on public land administered by the Bureau of Land Management for 1988 and subsequent years will be determined by a formula that consists of a base value of grazing on public land adjusted by indexes reflecting current year land lease rates, cost of production, and beef cattle prices. Because the formula for establishing grazing fees is being incorporated into the regulations, hereafter only the fee, as established under the formula, will be published as a Federal Register notice.

EFFECTIVE DATE: February 2, 1988.

ADDRESS: Inquiries or suggestions should be sent to: Assistant Director—Land & Renewable Resources (220), Bureau of Land Management, Room

5626, Main Interior Building, 1800 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Billy R. Templeton or Donald Waite, (202) 653–9193, or Mark E. Lawrence (202) 343–8735.

SUPPLEMENTARY INFORMATION: This final rulemaking amends Subpart 4130.7 of the existing regulations for the management of grazing on the public lands by providing that fees for grazing domestic livestock on public land administered by the Bureau of Land Management for 1988 and subsequent years will be determined by a formula that consists of a base value of grazing on public land adjusted by indexes reflecting current year land lease rates, cost of production, and beef cattle prices. Because the formula for establishing grazing fees is being incorporated into the regulations, only the fees as established under the formula for years *after 1988* will be published as a Federal Register notice. The grazing fee for the 1988 grazing season is established in accordance with this final rulemaking. Notice of the grazing fee for 1988 is contained in this preamble to the rulemaking.

Background

Under section three of the Taylor Grazing Act, enacted in 1934, "[t]he Secretary of the Interior is authorized to issue or cause to be issued permits to graze livestock * * * upon payment annually of reasonable fees in each case to be fixed or determined from time to time * * *.". The statute's preamble declared that its operative provisions were intended "to stabilize the livestock industry dependent upon the public range * * *".

The Federal Land Policy and Management Act of 1976 (FLPMA), did not alter this concept. The policy statement in that law that "the United States receive fair market value of the use of the public lands and their resources" was not reflected in the provisions relating to grazing fees. Rather, the statute simply directed the Secretary to study what was an "equitable" grazing fee, taking into account "the costs of production normally associated with domestic livestock grazing * * *, differences in forage values, and such other factors as may relate to the reasonableness of such fee." FLPMA left intact the notion that grazing fees were premised on reasonableness.

In 1978, however, with enactment of the Public Rangelands Improvement Act, (PRIA), the Secretary was provided with specific directions governing grazing fees. PRIA stated that "to prevent economic disruption and harm to the western livestock industry, it is in the public interest to charge a fee for livestock grazing permits and leases on the public lands which is based on a formula reflecting annual changes in the costs of production." The statute then established a policy "to charge for public grazing use which is equitable and reflects the concerns addressed * * * above." PRIA contained a grazing fee formula that takes into account the cost of livestock production and the public land permittee's ability to pay.

House Report 1122 (1978) of the 95th Congress stated that PRIA's policy direction and formula were in direct response to the Secretary's attempt at that time to set a grazing fee reflecting the fair market value of the public lands for that activity. Congress was extremely concerned that increasing grazing fees to fair market value would be injurious to the western livestock industry, especially since it was just recovering from a depressed agricultural economy. Moreover, as the House Committee on Interior and Insular Affairs reported, the formula produced a fee sensitive to the ranchers' costs of production and beef prices. This was viewed as a stabilizing influence on the western livestock industry. The Committee also pointed out that the fees generated by the formula, based upon ability to pay, would contribute to improving range conditions by encouraging private investment and discouraging trespass. The Senate Committee on Energy and Natural Resources concurred in the findings made by the House of Representatives in Senate Report 1237 (1978).

Congress, in considering the formula eventually codified in PRIA, acknowledged that many persons concerned with the public rangelands disagreed with pegging grazing fees to a ranchers' costs and ability to pay. Accordingly, PRIA made the grazing fee formula effective on a trial basis, from 1979 until the end of 1985. The law also called for a study to evaluate the performance of the formula and to explore alternative fee systems by the end of 1985. That study was produced too late for deliberation by the Congress in 1985. Therefore, to establish a fee for the 1986 grazing season and to give the Congress adequate time to consider the fee issue, the President of the United States, acting on advice from the affected Federal agencies and a number of Members of Congress, issued Executive Order 12548 on February 14, 1986.

Through Executive Order 12548, the President directed the Secretary of the Interior "to exercise [his] authority, to the extent permitted by law * * *, to establish fees for domestic livestock grazing on the public rangelands which annually equals [the fee under PRIA] * * * provided * * * that the fee shall not be less than $1.35 per animal unit month."

On March 12, 1986, the Secretary announced a decision to continue using the PRIA formula to set grazing fees, with the qualification that the fee would not be less than $1.35 per animal unit month of forage permitted or leased. The decision was based on the Secretary's Final Grazing Fee Review and Evaluation that was also issued on March 12, 1986. The fee for 1986 and 1987 was $1.35.

In the fall of 1987, the Secretary's decisions were judicially reviewed in *Natural Resources Defense Council* v. *Lyng, et al.*, Civil Action No. S–86–0548 EJG (E.D. Cal. 1987).

The Federal district court held that the grazing fee adopted, derived from the PRIA formula, was consistent with substantive statutory mandates and legislative policy. In particular, the opinion stressed that despite the fact that the trial period for the fee formula established by PRIA had expired, PRIA's underlying policies governing grazing fees remain in effect. The court also pointed out that the Secretary's decision was unaffected by FLPMA's policy favoring fair market value. That policy, while to be considered, was not required to be implemented in the case of grazing fees. FLPMA's specific direction was that the Secretary determine a grazing fee that is "equitable to the United States and to the holders of grazing permits and leases." The court also noted that the Secretary's adoption of the lapsed PRIA formula was consistent with the Taylor Grazing Act's purpose of stabilizing the western livestock industry.

However, the Secretary's procedure of adopting the grazing fee in a published notice alone was not upheld. The court ordered the Secretary to comply with the procedures for adopting rules specified in the Administrative Procedure Act.

Finally, the court remanded back to the Secretary the question of the formula's environmental consequence, and directed him to consider anew the formula's environmental impacts, if any, as specified by the National Environmental Policy Act.

Notice of Proposed Rulemaking and Environmental Assessment

In compliance with the district court's opinion, the Department of the Interior informed the public by publishing in the

ral Register on October 7, 1987, a e of proposed rulemaking relating to grazing fees, (52 FR 37485) with a 45 day comment period.

Under the proposed rule, the fees for grazing domestic livestock on public lands administered by the Bureau of Land Management for 1988 and subsequent years would be determined by using the lapsed PRIA formula, as specified in Executive Order 12548. It consists of a base value of grazing on public lands adjusted by indexes reflecting current year private land lease rates, cost of production and beef cattle prices. Because the formula for establishing grazing fees would be incorporated into the agency's rules and regulations, after 1988 the grazing fees would simply be published as a notice in the Federal Register.

The purposes of the proposed regulation were "to meet the policy objective set forth in the Taylor Grazing Act, the Federal Land Policy and Management Act, and the Public Rangelands Improvements Act, which remain vital", and achieve a "fee level that is reasonable and promotes ability in the western livestock ry." The proposed rulemaking d that these objectives would be met, since "[t]he fee is intended to reflect annual changes in costs of production and to be equitable to both grazing permit holders and to the government." The proposed rulemaking also stated that "the formula is intended to have no negative environmental impacts."

The latter finding was based upon an environmental assessment. It considered the proposition that the amount of grazing fees influences the level of grazing, especially the premise that lower fees lead to overgrazing. The environmental assessment observed on the basis of historical data that the conventional economic principle of inverse relationship between quantity available and its price in a competitive market did not apply under the lapsed PRIA formula. It followed, then, that continuing to use that formula would not alter existing environmental conditions. The environmental assessment also pointed out that grazing on public lands is determined on the basis of multiple use and sustained yield principles, not on economic principles of supply and demand. It also followed, then, that even if the proposed fees might encourage one to seek the agency's approval ease grazing, in actuality sed grazing could only occur if the agency decided that was consistent with its management principles. The fee itself could not be the proximate cause of the increased grazing.

The public was invited to comment on the proposed rulemaking, the environmental assessment and the finding of no significant impact. The environmental assessment also was made available to the public.

Public Comment on the Notice of Proposed Rulemaking

During the comment period, the public submitted 4,738 responses commenting on the notice of proposed rulemaking. Of this number 4,131 were from individuals, 435 from businesses, 129 from associations, 14 from local governments, 12 from state governments, 9 from universities and 8 from Congressmen or from other federal agencies. An additional 409 responses were postmarked after November 23, 1987. They were not considered.

Most of the individuals and other respondents supported the proposal to use the lapsed PRIA grazing fee formula, as set out by the President in Executive Order 12548. They pointed out that the formula, by accounting for costs of production and ability to pay, produced a fee that avoids economic disruption to the western livestock industry that depends upon public lands. They considered this particularly important given the relatively ill health of the agricultural economy.

Conservation groups and a minority of individuals opposed the proposal. The usual criticism was that the formula produces a fee below the fair market rental value of the public rangelands, and, by doing so, denies the government funds needed to manage rangelands and promotes overgrazing. Some concern was voiced that the proposal would give an inequitable advantage to public land permittees over ranchers without federal grazing permits. To avoid these consequences, they urged the Secretary to adopt a formula that recovers the fair market value of federal grazing.

Statement of Basis and Purpose

The decision to continue using the PRIA formula contained in Executive Order 12548 in setting grazing fees is based on the judgment that it results in a fair, just and suitable charge.

The formula produces a grazing fee that is equitable to the person who must pay it. Under the PRIA formula grazing fees change annually according to the costs of producing livestock and the market for that commodity. As previously reported to Congress by the Secretary of Agriculture and the Secretary of the Interior in the 1986 Grazing Fee Review and Evaluation study, under the PRIA formula, when the costs of production increased as measured by the prices paid index, the grazing fee decreased. Also reported to Congress was that almost every year the market price for livestock, as measured by the beef cattle price index, decreased, so did the grazing fee. The PRIA formula has worked the way Congress intended—it produces grazing fees corresponding to a rancher's cost of production and ability to pay.

Any inequity that might arise to a rancher who pays a higher price to graze livestock on private property is beside the point. As Congress explained in enacting PRIA, any benefit the fee might confer to public lands ranchers is acceptable because of the need to protect them from economic dislocation and to sustain dependent rural communities.

The formula, by producing fees responsive to a public lands rancher's economic realities, also is particularly appropriate, where, as here, any substantial increase in fees is likely to cause hardship to many ranchers. The Secretary's report addresses this. "When the grazing fee was increased from $2.00 to $5.00 per AUM, net returns [for ranchers] above cash costs declined." This increase would be significant for those permittees that are highly dependent on public lands. This becomes particularly important when measured against the long-term costs persons must pay to stay in the livestock business. With an average debt to asset ratio of 20%, any increase in grazing fees would aggravate and make quite difficult many ranchers' ability to pay off their long-term debt. Also, the size of livestock businesses may be adversely affected by a significant increase in grazing fees. "An increase in the fee of $1.00 per AUM would increase total grazing fee costs to 26,700 FS and BLM permittees by about $17.6 million." Finally, "changes in the grazing fee affect the permittee's asset position as a result of the changes in the value of the permit and thus affect the ability to borrow money."

The foregoing is corroborated by the numerous letters from ranchers and others establishing that any substantial increase in grazing fees would hurt a substantial number of ranchers just as they are beginning to recover from the plight of the agricultural economy over the past decade. States and localities also echoed the concern in the Secretary's report to Congress that a jump in grazing fees could depress rural community economies.

The formula also is equitable to the United States. It recovers a reasonable portion of the costs the BLM incurs in

rangeland management. As the Secretary's report to Congress stated, the PRIA fee could generate revenues covering fifty-four percent of those costs. Conversely, "[a]s grazing fees increase, the amount of permittee contribution to range improvements is expected to decline." Moreover, the establishment of a minimum fee at an amount which, in lean years for the western livestock industry, exceeds the formula's calculated fee, represents a direct effort to make the fee more responsive to the concept of cost recovery. While higher fees, assuming inelasticity of demand for federal forage, might provide for recovery of all the costs the BLM incurs in rangeland management, full recovery of the range program budget from ranchers is inappropriate because forty percent of the planning, inventory and management budget would be required to carry out basic range ecological tasks even in the absence of livestock grazing. Also funds spent on range improvements produce multiple use benefits and it would not be appropriate to charge all of these costs to the livestock industry.

The decision to continue using the PRIA formula, as stated in Executive Order 12548, to set grazing fees is also based on the finding that it poses no significant impact to the environment. By preserving the status quo, it should have no environmental consequence.

Despite the public comment that the PRIA fee is the cause of overgrazing, there is no evidence of any correlation between the fee and livestock use. From 1980 to 1986, the grazing fee steadily decreased from $2.36 to $1.35. However, the amount of livestock grazing occurring on the public lands during the same period fluctuated. Accordingly, if the PRIA fee dictated use, the expectation would be that every year the fee decreased, an increase in use would have occurred. This was not the case. For example, from 1982 to 1983, while the fee decreased by twenty-five percent, livestock use did not increase at all, but instead decreased by three percent. While the fee remained the same in 1985 and 1986, livestock use decreased by nearly seven percent.

Moreover, from the years 1980 to 1986 the fee decreased by forty-three percent while the amount of livestock use remained almost unaltered, increasing less than two percent. In short, the changes in the PRIA fee and livestock use are unrelated and it is unreasonable to assume any correlation.

Thus, the PRIA fee is highly unlikely to alter livestock use. By preserving the status quo, it is equally unlikely that there will be any changes in environmental conditions.

The absence of a correlation between the PRIA formula and livestock use is not reflected in other governmental documents. A document prepared by the Office of Management and Budget, entitled Grazing Fee Presentation (1985), which is referred to in a few public comments, had only two statements about grazing fees and overgrazing. One states that "[e]nvironmental groups support fee increases as [a] disincentive to overgraze." The other statement is found in a section named "objectives of grazing fee system," and states that a grazing fee should "discourage overgrazing." Neither are substantive statements. The Council on Environmental Quality's report, *Desertification of the United States* (1981), another often cited document, reaches a similar conclusion. While the report infers that "federal grazing fees that are well below the free market price encourage overgrazing of the commons," the statement represents theory rather than empirical evidence. No proof accompanies the statement. More important, the statement was made seven years ago. Since then the evidence shows that there is no discernable relationship between the PRIA fee and livestock use.

BLM's publication entitled *Program Direction—Oregon and Washington 1986* and the Economic Research Service report, *A Theoretical Evaluation of Fee Systems for Private Grazing on Federal Lands* have also been examined. While they also state a relationship between fees and livestock use, the statements are unpersuasive, theoretical and not supported by rigorous analysis of empirical data.

Other public comments state that the PRIA fee causes overgrazing because ranchers increase their use on the public lands because the price is artificially low. The statement, though, is only speculation. Ranchers may opt to, and in fact have, foregone increasing their livestock use despite the existence of the PRIA fee. While the fee may affect a rancher's decision about how many livestock to graze, it is only one consideration among many, and usually, is not the predominant factor. According to recognized experts in the field, and the livestock industry, costs of production, market conditions, and the quality of the public lands from one year to another, among other considerations have more bearing on the amount of grazing.

A corollary public comment draws a connection between how the BLM manages livestock grazing and the fee. These comments claim: (1) Ranchers are not grazing as many livestock as the agency permits; (2) ranchers' actual use, however, causes environmental degradation, and therefore, (3) if the fee induces the ranchers to make more use, up to permitted levels, then more environmental harm will occur.

These comments fail to recognize that even if the fee is an inducement, it has no bearing on how many livestock the rancher may graze. Agency approval is required before ranchers may increase their livestock use up to the maximum level and any increase in grazing use is the prerogative of the agency. That decision is not based on economics, but on the agency's judgment concerning whether the range can withstand additional grazing. In making that judgment the agency's responsibility is to prevent unnecessary and undue environmental degradation.

Even if the PRIA fee were to have the effect claimed by some public comments—that increased livestock use leads to overgrazing—the environmental impacts from any grazing are largely known on a site specific basis. One hundred thirty-seven impact statements have already been completed on grazing use covering 169,809,000 acres of public rangelands. By the end of 1988, five more site specific statements will be completed, involving another 4,042,000 acres. A review of the completed studies shows consideration of livestock grazing at actual use and permitted levels, as well as grazing beyond permitted levels. The documents also address ways to redress any overgrazing that is or may occur under differing levels of use. Repeating that effort by producing a programmatic impact statement that accounts for different levels of use, upon the assumption that fees are the cause, is to place form over substance. It also is a questionable use of resources given the fact that the current fee has little effect in altering the status quo.

The court and others commenting on the environmental assessment expressed concern that the description of the "affected environment" did not specifically relate to lands administered by BLM and there is no reference to the current range condition of any site specific areas or aggregated areas. Description of the "affected environment" comes directly from the programmatic EIS *Livestock Grazing Management on National Resource Land (1974)* and provides a broad overview of the general nature of the western environment of public lands. As stated previously BLM has completed site-specific environmental impact statements. In addition to describing the

ted environment," the EIS's discuss range condition, and the effects of livestock grazing, provide site-specific analysis, allotment or area specific objectives, and site-specific grazing proposals, and address site-specific issues, resource problems, conflicts, and management actions on public rangelands. Also, the environmental impacts of range improvements are analyzed.

Even though the BLM has or will by the end of 1988 complete site specific EIS's on all public lands subject to livestock grazing and the grazing fee, this information is not necessary for analyzing the impact of the fee. As had been documented in the EA on this rulemaking, the grazing fee has no known, predictable, or measurable effect on the physical or biological environment.

None of this discussion is meant to suggest that the consideration of fair market value has been ignored in this rulemaking. Rather, the arguments for fair market value are unpersuasive.

First, raising grazing fees to "fair market value" will not necessarily ce grazing. Regardless of the fee, ers must make substantial use of ivilege to graze livestock. The regulations prohibit a rancher from "failing to make substantial grazing use as authorized for two consecutive years." And while a higher fee may mean some ranchers cannot abide by this regulation, and thus lose their permit, fair market value implies that someone else will be willing to take over at the new price.

Second, no one knows with any confidence what will happen to the demand for federal forage if its price is increased to fair market value. It all rests on the hypothesis that the demand will remain inelastic. At this point, the relationship is conjectural.

Third, the perception that fair market value will reduce overgrazing rests on chance. If a rancher can afford the new fee in an area where overgrazing may be occurring, a reduction in grazing will not occur. Conversely, if a rancher cannot afford the fee in an area of that is being properly grazed, the higher fee causes economic dislocation with no corresponding environmental benefit.

Fourth, there are means available to deal with overgrazing other than the grazing fee. They range from the BLM ordering reduced livestock numbers, anges in seasons of use or kinds of o new grazing patterns, and to cts to rehabilitate the range, including seeding or water development. The traditional means make it unnecessary to use pricing which is indiscriminate as a means of solving overgrazing problems.

Fifth, it is somewhat uncertain that adopting a fair market value approach would generate more monies to fund the range improvements necessary to compensate for isolated cases of overgrazing. Beyond resting on the premise of inelastic demand, the proposition appears to assume Congress will appropriate sufficient funds for needed range improvements. Recent experience would bring into question that assumption. In making appropriations for fiscal year 1987, Congress did not choose to make up the difference between the grazing fee receipts collected by the BLM and the ten million dollar range improvement appropriation fund promised in FLPMA. Moreover, Congress has not funded any of the 360 million dollar authorization for range improvements made in 1978 under PRIA.

Finally, the final rulemaking serves the additional purpose of being consistent with legislative intent under PRIA, FLMPA and the Taylor Grazing Act. The formula specified in PRIA has worked as intended and meets the policies underlying that formula. It is equally equitable to the rancher who must pay the fee and to the United States. FLPMA, as a consequence, is served well by the rule. Finally, since the formula takes into account costs of production, market conditions and ability to pay, little doubt can exist that the fee promotes stability in the western livestock industry. Thus, the final rulemaking meets the intent of Taylor Grazing Act. All of this is confirmed by the decision in *Natural Resources Defense Council v. Lyng, et al.*, supra.

Response to Public Comment on Related Issues

Comments on the proposed fee formula centered on eight basic issues: (1) Fee Formula Structure and Alternatives, (2) Fair Market Value and Comparability, (3) Livestock Grazing Use and Environmental Effects, (4) Availability of Range Improvement Funds, (5) Subsidy and Stability of the Western Livestock Industry, (6) Equity to Other Public Land Users and Non-Permittees, (7) Cost Recovery, and (8) The Local Economy, Rural Social Values, and Importance of Public Forage. The following discussion supplements the presentation of these issues in the Statement of Basis and Purpose above.

(1) *Fee Formula Structure and Alternatives*—Several comments opposing the proposed grazing fee formula expressed concern that the PRIA fee formula takes costs of production into account three times—in establishing the $1.23 per AUM base value, in the "Forage Value Index" (FVI), and in the "Prices Paid Index" (PPI). Several other comments expressed the belief that the PRIA formula "double counts" Federal permittees' ability to pay and that the $1.23 per AUM base value is too low. These comments suggested the alternative of not including beef cattle prices and cost of production or other "ability to pay" indexes in the fee formula. Competitive bidding was suggested several times as an alternative approach to establishing grazing fees. Several comments expressed the belief that the Administration had abandoned its 1977 Grazing Fee Study position of supporting a formula that attained fair market value.

Most comments supporting the proposed fee formula either specifically mentioned or inferred support of all that is embodied in the PRIA formula. The comments viewed the proposed formula as a judicious reflection of private land lease rates, produciton costs of operators, and beef cattle prices. Many comments expressed the view that the PRIA formula, with a minimum of $1.35, is working well and as intended and there is no reason to change it.

In reviewing the comments regarding the number of times cost of production is counted in the proposed fee formula, is became evident that there is a lack of understanding concerning the difference in establishing the base value of $1.23 per AUM and the functions of the Forage Value Index and Prices Paid Index indexes. The $1.23 base was established as the fair market value of Federal forage through the 1966 Western Livestock Grazing Survey. Cost differences of using private leases as opposed to public leases were used to adjust the private land lease rate so that it reflected a comparable public land lease rate. This is not an adjustment to reflect change in "ability to pay." The PPI adjusts for year-to-year changes in the cost of production and does reflect "ability to pay." The FVI adjusts for year-to-year changes in the private land lease rate and, thus, keeps the base value current in reflecting fair market value. A level of ability to pay is probably reflected in the FVI but only to the extent it reflects the cost of private land leases. The extent to which the FVI and PPI are combined to reflect ability to pay is not apparent because the cost components that make up the PPI, which is a composite index, do not include the cost of private land leases. Even if the PPI did include the private land lease rate, an increase in the lease rate and

thus the PPI would drive the fee down, whereas an increase in the private land lease rate and thus in the FVI would drive the fee up. These two indexes drive the fee in opposite directions.

The Administration's proposal to include consideration of beef cattle prices and cost of production in the fee forula and to reject all other alternative formulas that do not include these factors is in direct response to the expressed findings of Congress when it enacted the 1976 Public Rangeland Improvement Act. The underlying policy of PRIA, which is still in effect, states thta "* * * to prevent economic disruption and harm to the western livestock industry, it is in the public interest to charge a fee for livestock grazing permits and leases on the public lands which is based on a formula reflecting annual changes in the costs of production." In response to the concern that the Administration has changed its position since its 1977 proposal *(Study of Fee for Grazing on Federal Lands, October 21, 1977)*, the action of Congress since that time should be noted.

In stating the policy that the grazing fee should include beef cattle prices and cost of production, Congress specifically rejected the fair market value policy expressed in the 1977 Fee Report. H.R. Rep. 1122, 95th Cong., 2d Sess., *Improving the Range Conditions of the Public Lands* (PRIA House Report) at pp. 16–20. As the House Committee reported, the formula would prevent ranchers who depend upon public lands for grazing livestock from being forced out of business by the combined pressures of high production costs and low beef prices. The Senate Committee on Energy and Natural Resources concurred in the findings made by the House of Representatives. S. Rep. 1237, 95th Cong., 2d Sess., at 11 (September 23, 1978).

To elaborate, the PRIA House report makes it clear that Congress rejected the Secretaries' formula primarily because it failed to incorporate factors recognizing "the costs of production, beef prices, or the ranchers' ability to pay." It believed these factors were important because the fee increases proposed by the Secretaries' formula, "when considered along with rapidly escalating costs for other aspects of livestock production, would place an increasing, and perhaps crippling, burden on the many livestock operations which are heavily dependent on the use of the public grazing lands." This burden could contribute to what Congress saw as an alarming rate of farm and ranch closures occurring nationwide. Congress was equally concerned that the Secretaries' proposed grazing fee increases would come "at a time when the Western Livestock industry is just recovering from, very depressed beef prices and severe drought conditions."

(2) *Fair Market Value and Comparability*—Many of the comments opposing the proposed fee formula expressed the view that the Government should charge fair market value for Federal forage. The 1983 *Mass Appraisal Report* prepared by the Bureau of Land Management and Forest Service (FS) was cited as the basis for the determination of fair market value. Also cited in support of the determination of fair market value was the report prepared by C. Kerry Gee and Albert G. Madsen, *The Cost of Subleasing Federal Grazing Privileges.* Comments related to this report suggested that subleasing is proof that lessees are willing to pay considerably more for public grazing than the Government charges. A few comments cited specific examples of private land leases where the leases were considered comparable to public land leases but the lease rate was significantly higher than the Federal grazing fee. Also, cited were situations where States and railroad companies charge higher grazing fees than the BLM and FS.

A number of comments that supported incorporating in the proposed rulemaking the formula in Executive Order 12548 expressed the belief that the public lands are not comparable to private lands, and therefore, private land lease rates do not reflect the value of public land grazing. Numerous examples of this situation were presented. Higher costs of using public lands are compared to private lands were cited most often as the major difference between private and public leases. Cost differences cited most often were higher fence and water facilities maintenance, trucking, herding, salt distribution, vandalism, capital investments, male breeding stock, and death losses. Also some comments expressed the belief that land administered by BLM, as compared to private lands, are of poorer grazing quality, have less water, produce lighter calves and lower calving percentages, and are subject to more restrictions and control. A few comments suggested that the high level of non-use of available AUM's on public land in some areas is proof that the current grazing fee exceeds the grazing benefits to the user. A number of comments expressed the view that the PRIA formula as presented in the proposed rulemaking represents the fair market value of a Federal grazing permit or lease.

The fair market value issue was addressed in the case of *Natural Resources Defense Council, Inc. v. Lyng, et al., supra.* The Court held that "although return of the fair market value of Federal forage is one goal in establishing the grazing fee, it is within the discretion of the Secretaries to consider other factors." This discretion is accorded to the Secretary of the Interior under PRIA, FLPMA and the Taylor Grazing Act.

Even though the Government is not required to charge fair market value for Federal grazing, that concept nevertheless is given consideration. Fair market value has been previously addressed in the statement of basis and purpose. In addition, what constitutes fair market value and how to measure it is disputed. As mentioned earlier, the base value of $1.23 per AUM used in the proposed fee formula was established as fair market value in the 1966 Western Livestock Grazing Survey (WLGS). To arrive at this value, the Survey used a scientifically and statistically sound process of explicitly accounting for the differences in the costs (e.g., fence maintenance) of using public lands as compared to private lands. Congress defined "fair market value" of Federal grazing as the fee that is generated by the Public Rangeland Improvement Act formula. The 1983 mass appraisal, conducted by the BLM and FS, used the private land lease rates with adjustments to reflect the market rental value for Federal forage. Values were estimated for each of six pricing areas. The value estimates do not represent the "site specific" fair market grazing rental value of any individual allotment. Rather, they are intended to represent a reasonable estimate of the mean average rental value of public grazing in each pricing area. It should be noted that using these average values to set fees would result in overpricing one-half of the forage in each pricing area and underpricing the other one-half. The 1983 mass appraisal has been heavily criticized principally for not being statistically valid and not making proper adjustments for comparability between private and public land leases.

In reviewing the comments concerning subleasing of BLM grazing privileges, it becomes clear that confusion exists on this issue. First, the so-called subleases discovered in the 1983 mass appraisal and analyzed in the Gee and Madsen Report do not fit BLM's legal definition of a sublease. If the BLM land was any part of a ranching operation under lease, the appraisal categorized this as a sublease even though the leasee of the ranching operation may have had a

arate valid lease from the BLM. It is to gain access to BLM grazing ileges and thus lease BLM permits directly by leasing or otherwise controlling the private base property that is associated with the public lands. Most of the so-called subleases in the appraisal were not 100 percent BLM land but part of a larger operation which may have included private deeded land, railroad land, or other types of ownership. Second, as indicated in the Gee and Madsen report, the lease rates were higher where the percentage of BLM acreage was low and lower where BLM land made up a larger percentage of the lease. The Gee and Madsen Report also indicated that current Federal grazing fees do not reflect market value of the resource but that lease market rates are highly variable and individualized. Third, subleasing is illegal. The regulations makes this very clear. Whenever subleasing is discovered, actions are taken against both the permittee and the sublessee.

(3) *Livestock Use and Environmental Effects*—A substantial number of the comments opposing the proposed grazing fee formula expressed concern t the fee resulting from the formula d encourage overgrazing and have ful environmental effects. The comments stated that a low fee would cause permittees to graze excessive livestock resulting in degradation of wildlife habitat, riparian areas, and other environmentally sensitive areas. A number of comments also suggested that if the Government is not going to charge fees above what they currently charge, all livestock should be removed from public lands. A few comments suggested that a higher fee would induce permittees to take better care of their Federal grazing privileges.

On the other hand, a large number of comments opposed the view that there is a connection between the level of fees, livestock use, and environmental effects. Some comments observed that the level of livestock grazing use is established by Government agencies through land use plans and other procedures and that these levels are regulated and enforced. Several other comments expressed the belief that permittees take as good of care of public lands as they do their own, that financially strong permittees are better able to maintain public land productivity and that much of the West never supported vegetation or wildlife much above current levels. A number of tional comments directly opposed iew that livestock should be moved from the public rangelands and suggested that livestock can be used as a tool to restore, protect, and enhance resource values. They stated that livestock grazing may be the least environmentally harmful of all public land uses. Finally, a couple of comments suggested that the BLM should continue a strong program of monitoring, enforcing, supervising, and implementing stocking rates and that the fee should not be tied directly to these objectives.

These comments were addressed in the Statement of Basis and Purpose. To supplement that discussion, land use plans (LUP) and environmental impact statements (EIS) set forth the overall management objectives for managing livestock grazing on public lands. The broad management objectives of the LUP determine the number of livestock and season of grazing, the types of grazing prescriptions that can be used, and the range improvements that may be installed. Livestock grazing management on public land is closely monitored to ensure that current management practices are meeting the management objectives of the LUP/EIS. If the objectives are not being met, adjustments in management are made to change the direction of management to reach the objectives. Livestock grazing management on public lands is to be consistent with the principles of multiple use and sustained yield.

By both statute and regulation, the level of livestock permitted to graze on public lands is based upon a determination of the carrying capacity of the land which in turn is based on monitoring range conditions and incorporates environmental considerations. The grazing fee plays no part in the determination of permitted grazing use. For various reasons, permittees may, with agency approval, elect not to graze up to the level of permitted use. The difference between actual use and full permitted use is referred to as "approved nonuse." If a permittee decides to activate the approved nonuse, agency approval must be obtained. The only possible bearing that fees could have on the level of grazing use is in the area of "approved nonuse" or of unauthorized use.

An analysis of the correlation between nonuse and grazing fees and active grazing use levels and grazing fees for the past 7 years indicates that these factors do not correlate in accordance with economic theory. There is no clear evidence that lower fees have led to increased utilization of BLM forage within the allowable limits or that higher grazing fees have led to decreased utilization.

Any assessment of the comments that lower fees would create an incentive to illegally exceed levels of permitted use would be a speculative exercise. Grazing use above permitted use is considered trespass and is handled accordingly.

Concerning the comments on removal of all livestock and the alternative of using livestock as a management tool, it is important to recognize certain principles of range management. Controlled livestock grazing can be used to selectively graze undesirable plant species. Controlled livestock grazing also can be used to graze desirable species during phenological periods of reduced susceptibility. In addition, grazing may be used to promote the tillering of desirable species and to reduce plant residues which inhibit productive growth. A further benefit of proper livestock grazing is the increased vigor and production of desirable plants. Furthermore, removal of all livestock from public lands would not be in accordance with the principles of multiple use required by FLPMA.

(4) *Availability of Range Improvement Funds*—A large number of the comments opposed to the proposed rulemaking expressed the view that higher fees would generate more funds for improving Federal rangeland. Some comments suggested specific projects identified in existing LUP/EIS's as areas that need funding.

A large number of comments in support of the proposed rulemaking suggested that the range improvement funds may not increase with increased fees because permittees might use less forage. Other comments stated that Congress might not appropriate the additional funds and permittees might invest less of their own funds in public lands. A few comments suggested that incentives and programs, such as Experimental Stewardship, be used to increase funds for improving public rangelands.

It would be entirely speculative to project whether an increase in fees would result in increased funds for on-the-ground range improvements. FLPMA provides that 50 percent of all grazing fees are authorized to be appropriated by Congress and that one-half of these receipts are available for use in the district or region from where they were derived and the remaining one-half as the Secretary concerned directs. All of these funds are to be used for on-the-ground range rehabilitation, protection, and improvements. Congress has not always appropriated the full amount of difference between the funds available from receipts and the $10 million

specified by FLPMA. Whether it will do so in the future is uncertain. Also, since Range Improvement (RI) funds cannot be used for range administration it is necessary for Congress to supplement the appropriation in order for RI funds to be expended in a planned manner. Additionally, the level of increased revenue will depend upon the amount of forage demanded at various fee levels. The elasticity of demand for Federal forage had not been empirically tested and demand studies of the private forage market is a free market and does not have many of the requirements placed on the public forage market (e.g., base property requirements). Also, an increase in fees is likely to reduce the level of permittee investments in public lands.

(5) *Subsidy and Stability of the Western Livestock Industry*—A large number of the comments that opposed the proposed rulemaking expressed the belief that the fee generated by the formula results in an unwarranted subsidy to a small segment of the western livestock industry. Many comments also expressed the belief that the fee largely subsidizes ranching operations owned by oil companies, out-of state investors, and large corporations. It was also suggested that since BLM and FS permittees represent only 7 percent of the livestock producers in the 16 Western States, it is not possible for the grazing fee to stabilize the industry. Finally, a few comments suggested that if the industry is to be subsidized, it should be subsidized directly and not through grazing fees.

Numerous comments supporting the proposed rulemaking described the financial difficulties of the livestock industry, the large number of bankruptices, and economic troubles of family ranch operations and suggested that a fee tied to economic conditions is justified. A few comments expressed the view that raising fees would only serve to negate the effect of other programs designed to assist agriculture.

In response to these comments and as expressed earlier, the Secretary of the Interior is statutorily mandated by the Taylor Grazing Act "to stabilize the livestock industry dependent upon the public range." The underlying policy of PRIA, which is still in effect, prescribes that the grazing fee formula reflect annual changes in the costs of production in order "to prevent economic disruption and harm to the western livestock industry."

According to the findings of a recent General Accounting Office investigation, the typical BLM permittee is an individual, operating a family business, who owns the ranch that serves as base property, and also resides on the base property or in a local community within 100 miles of the base property. Specifically, the report states that 84 percent are individuals or partnerships, 91 percent own the base property, and 95 percent reside within 100 miles of base property. Only 11 percent of BLM permittees were found to be corporations, and many of these are family corporations. Additionally, BLM's grazing records indicate that about 90 percent of it permittees are family size operations or smaller with less than 500 head of cattle. The level of dependency of permittee ranch operations on Federal forage varies considerably from State to State. In Arizona, permittees obtain an average of 60 percent of their annual feed supply from Federal rangelands. This is the highest average percentage of the 13 Western States. In Montana, the State with the lowest percentage, permittees depend on Federal forage for 11 percent of their supply. It should be noted that the percentage do not always reflect the extent of the dependency because use of public and private land is interdependent and Federal forage often provides feed during critical periods of the year. Regardless of what percent of the western livestock industry are permittees or the extent to which fees might held stabilize the industry or the percentage of forage that is provided to permittees by public lands, the Secretary of the Interior is still required to the extent possible to consider and carry out the statutory obligation of stabilizing the dependent livestock industry.

(6) *Equity to Other Public Land Users and Non Permittees*—A large number of comments opposing the proposed rulemaking raised the point that the Federal grazing fee is not equitable because only a part of the livestock industry has federal grazing permits. The belief is that the fee structure gives permittees an unfair competitive advantage over non-permittees. A few of the comments also expressed the belief that large numbers of permittees exclude the public from Federal lands, and therefore, permittees should not be given credit for sharing public lands.

Numerous comments in support of the proposed rulemaking expressed the view that the proposed fee formula is equitable because Federal permittees provide feed and shelter on their private lands to wildlife that the public enjoys on public lands, and permittees invest in and maintain water facilities, roads, and other improvements on public lands that benefit wildlife, wild horses, riparian areas, and recreational users. Also mentioned in several comments was the belief that livestock grazing reduces fire hazards. Many other comments noted that a number of public land users such as hunters and general recreationists do not pay anything to use public lands. Finally a few comments raised the equity issue that in order to use federal grazing privileges, it is necessary to invest in base property and because of the intermingled land pattern, Government restrictions are placed on permittees' private lands.

Beyond the earlier consideration given this issue, the Economic Research Service, U.S. Department of Agriculture, compared the "receipts less cash costs" positions of public land permittees and all western livestock industry producers and found them not to be statistically different. One of the explanations is that any advantage that might result from the level of the PRIA fee is offset by the higher cost of using public lands or the lower return from less productive public lands. The proposed grazing fee formula provides no specific adjustment to compensate permittees for the benefit they might provide to, or the added costs they might incur from, other public land users. At the same time it should be noted that some recreationists pay to use BLM land for special recreational events and camping but most do not pay for general recreation uses.

(7) *Cost Recovery*—A large number of comments opposing the proposed rulemaking suggested that the grazing fee recover the costs of the grazing program. Most felt this was necessary in view of the large Federal deficit and the need to reduce taxes.

A large number of comments supporting the rulemaking expressed the opposite view and suggested that the fee should not recover all the costs. The belief was expressed that range program costs include non-range related items such as salaries for other resource specialists, some basic range program costs that would be incurred even in the absence of livestock grazing, and that the range program generates multiple-use benefits.

In response to the comments concerning cost recovery, and in addition to what has been said earlier, it is helpful to understand that the costs of the BLM range program include three broad categories: Allotment Planning and Inventory, Grazing Management, and Range Improvement. Congress appropriates the funds for the first two categories and in the past has appropriated all the funds that are available from return of 50 percent of the grazing receipts for range improvements. However, in recent years, Congress has not made up the

ifference between 50 percent of the fee eipts and the $10 million for range provements specified in the Federal Land Policy and Management Act. Range program funds do not provide salaries for the resource specialists or their programs. It is true that there would still be some basic range resource tasks and, thus, costs in the absence of livestock grazing. In a special budget analysis, the BLM determined that it would require about 40 percent of the current planning, inventory, and range management budget to carry out certain basic resource protection and rangeland ecology tasks even in the absence of livestock grazing. Comments concerning multiple use benefits are also valid. Range improvements are capital investments that improve wildlife habitat, watersheds, and riparian areas, as well as livestock forage. Water developments particularly benefit wildlife. In view of this, it is questionable whether the grazing fee should be required to recover annually all of capital investment RI costs that produce non-livestock benefits as well as livestock benefits.

(8) *The Local Economy, Rural Social Values and Importance of Public* ge—A number of comments osing the proposed rulemaking expressed the belief that since Federal land forage makes such an insignificant contribution to the nation's forage supply, it is not important enough to be given special pricing consideration. A few comments expressed the view that livestock forage production should not be supported because it leads to the production of red meat which is an unhealthy food. A few comments expressed opposition to the proposed fee formula because it is believed to support a rural western lifestyle and that support of this lifestyle is unnecessary. Some comments stated that Federal grazing represents a very small portion of the local economy.

A large number of comments in support of the proposed rulemaking expressed a different position on the socioeconomic aspect of grazing fees. Many stated that Federal grazing is very important to many local rural economies and that an increase in grazing fees could have a significant impact on rural western communities that are already economically depressed. Many comments stated that a healthy ranching community contributes to the diversity of the local economy, lifestyle, and social values and that this is a public benefit.

Additionally, a large number of comments countered the view that production of Federal forage is not significant and cited statistics on a number of Western States where a large percentage of the beef cattle graze at least part of the year on Federal rangeland. A few comments also expressed the opinion that the contribution of forage and livestock production from Federal lands is important to providing food for the Nation.

In response to the comments it should be recognized that State and community interests are affected in two basic ways by changes in the grazing fee. First, State and county governments are affected financially through the level of payments that are made from grazing fee receipts. Under the Taylor Grazing Act, BLM makes payments to the State and county governments of 12.5 percent and 50 percent of the fees collected from section 3 and section 15 lands, respectively. The 1986 Grazing Fee Report shows, for example, that payments to States in 1982, when fees were $1.86 per AUM, varied from a high of $946,600 to New Mexico to a low of $200 to Kansas. Second, the State and local economy is affected by the amount of fees that are paid out and the percentage of money that is returned to the area. Money is returned through direct payment as well as through range improvement expenditures that come from the return of 50 percent of the grazing receipts. Since the Federal Government retains a percentage of all fee receipts, any increase in grazing fees would have an adverse economic impact on the State and local areas. The significance of the impact varies depending upon how dependent the State or local economy is on Federal grazing.

Special studies prepared for the 1986 Grazing Fee Report also show that there is a wide range in economic dependency of rural western communities on Federal forage. Areas that show higher dependency, for example, include Catron County, New Mexico; Owyhee County, Idaho; Sublette County, Wyoming; and Harney County, Oregon. Raising the grazing fee from the current level of $1.35 to $4 per AUM would reduce personal income in these four areas by about 7.1 percent, 6.0 percent, 3.5 percent and 3.5 percent, respectively. A study of the economic impact on Western States of increasing fees from $1.35 to $3 shows that personal income would be reduced by about $50.5 million and employment by about 1,590 jobs.

The importance of Federal forage from the production standpoint depends upon the context in which it is being considered. Federal forage provides 10 percent of the Nation's total rangeland forage and 2 percent of the total feed consumed by cattle in the United States. In many Western States, Federal grazing is a highly significant portion of total grazing. For example, 88 percent of the cattle produced in Idaho, 64 percent in Wyoming, and 63 percent in Arizona graze at least part of the year on public rangelands. The Secretary of the Interior cannot eliminate consideration of community social or economic impacts or the importance of production of Federal forage in the decision on the grazing fee formula simply because a few western states do not have a significant level of dependency on Federal forage.

Conclusion

For the foregoing reasons, the final rulemaking adopts the provisions of the proposed rulemaking without change. Implementation of the fee formula set out by the President of the United States in Executive Order 12548 and reestablished in this rulemaking will result in a grazing fee that is reasonable and equitable to the United States, the holders of the grazing privileges, State and local interests, and other interested parties. Also, administration of this fee system will be efficient and cost effective.

The public is hereby notified that the grazing fee for 1988 is $1.54 per animal unit month (AUM). This was arrived at by using the fee formula contained in this rulemaking which becomes effective today.

$$\text{CF (Calculated Fee)} = \$1.23 \times \frac{234\ (\text{PVI}) + 272\ (\text{BCPI}) - 381\ (\text{PPI})}{100} = \$1.54 \text{ per AUM}$$

This fee meets the requirements of § 4130.7–1(a)(2) of the regulations that any annual increase be not more than 25 percent of the previous year's fee. The fee in 1987 was $1.35 per AUM.

Editorial changes have been made as necessary.

The principal authors of this final rulemaking are Billy R. Templeton and Donald Waite, Division of Rangeland Resources, Bureau of Land Management, assisted by staff of the Division of Legislation and Regulatory Management, Bureau of Land Management.

Based upon an environmental assessment and a finding of no signficant impact, it is hereby determined that the publication of this final rulemaking is not a major Federal action significantly affecting the quality of the human environment and that a detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4322(2)(C) is not required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and no Regulatory Impact Analysis is required. The Department of the Interior has further determined that this proposed rulemaking will not have a negative impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 60 *et seq.*). The provisions of this proposed rulemaking are applicable to anyone who possesses a grazing permit or lease on the public lands, without regard to the size of the operation.

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Under the authority of the Taylor Grazing Act of 1934, as amended (43 U.S.C. 315 *et seq.*), the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1701 *et seq.*), the Public Rangelands Improvement Act of 1978 (43 U.S.C. 1901 *et seq.*), and Executive Order 12548 of February 1986, it is proposed to amend § 4130.7, Part 4100, Group 4100, Subchapter D, Chapter II of Title 43 of the Code of Federal Regulations as set forth below:

List of Subjects in 43 CFR Part 4100

Administrative practice and procedure, Livestock, Penalties, Range management.

J. Steven Griles,

Assistant Secretary of the Interior.

January 27, 1988.

PART 4100—[AMENDED]

1. The authority citation for 43 CFR Part 4100 continues to read as follows:

Authority: 43 U.S.C. 315, 315a–315r, 1701 *et seq.*, 1181d, and 98 Stat. 1837.

2. Section 4130.7–1 is amended by adding paragraphs (a)(1), (a)(2) and (a)(3) to read as follows:

§ 4130.7–1 Payment of fees.

(a) * * *

(1) Except as provided in paragraphs (a)(2) and (a)(3) of this section, the calculated fee or grazing fee shall be equal to the $1.23 base established by the 1966 Western Livestock Grazing Survey multiplied by the result of the Forage Value Index (computed annually from data supplied by the National Agricultural Statistics Service) added to the Combined Index (Beef Cattle Price Index minus the Prices Paid Index) and divided by 100; as follows:

$$CF = \$1.23 \times \frac{FVI + BCPI - PPI}{100}$$

CF = Calculated Fee (grazing fee) is the estimated economic value of livestock grazing, defined by the Congress as fair market value (FMV) of the forage;

$1.23 = The base economic value of grazing on public rangeland established by the 1966 Western Livestock Grazing Survey;

FVI = "Forage Value Index" means the weighted average estimate of the annual rental charge per head per month for pasturing cattle on private rangelands in the 11 Western States (Montana, Idaho, Wyoming, Colorado, New Mexico, Arizona, Utah, Nevada, Washington, Oregon, and California) (computed by the National Agricultural Statistics Service from the June Enumerative Survey) divided by $3.65 and multiplied by 100;

BCPI = "Beef Cattle Price Index" means the weighted average annual selling price for beef cattle (excluding calves) in the 11 Western States (Montana, Idaho, Wyoming, Colorado, New Mexico, Arizona, Utah, Nevada, Washington, Oregon, and California) for November through October (computed by the National Agricultural Statistics Service divided by $22.04 per hundred weight and multiplied by 100; and

PPI = "Prices Paid Index" means the following selected components from the National Agricultural Statistics Service's Annual National Index of Prices Paid by Farmers for Goods and Services adjusted by the weights indicated in parentheses to reflect livestock production costs in the Western States: 1. Fuels and Energy (14.5); 2. Farm and Motor Supplies (12.0); 3. Autos and Trucks (4.5); 4. Tractors and Self-Propelled Machinery (4.5); 5. Other Machinery (12.0); 6. Building and Fencing Materials (14.5); 7. Interest (6.0); 8. Farm Wage Rates (14.0); 9. Farm Services (18.0).

(2) Any annual increase or decrease in the grazing fee for any given year shall be limited to not more than plus or minus 25 percent of the previous year's fee.

(3) The grazing fee for any year shall not be less than $1.35 per animal unit month.

* * * * *

[FR Doc. 88–2088 Filed 2–1–88; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA-320-08-4212-02; Circular No. 2603]

43 CFR Parts 2920 and 9260

Leases, Permits and Easements and Criminal Law Enforcement; Amendment To Provide Procedures for Action for Unauthorized Use of the Public Lands

Under the authority of sections 302, 303, and 310 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1732, 1733, 1740), Part 2920, Group 2900, Subchapter B, and Part 9260, Group 9200, Subchapter I, both of Chapter II of the Code of Federal Regulations, are amended as set forth below.

PART 2920—[AMENDED]

1. The authority citation for Part 2920 is revised to read:

Authority: 43 U.S.C. 1732, 1733 and 1740.

2. Section 2920.0–3 is revised to read:

§ 2920.0–3 Authority.

Sections 302, 303 and 310 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1732, 1733, 1740) authorize the Secretary of the Interior to issue regulations providing for the use, occupancy, and development of the public lands through leases, permits, and easements.

3. Section 2920.0–5 is amended by adding a new paragraph (m) to read:

§ 2920.0–5 Definitions.

* * * * *

(m) "Knowing and willful" means that a violation is "knowingly and willfully" committed if it constitutes the voluntary or conscious performance of an act which is prohibited or the voluntary or conscious failure to perform an act or duty that is required. The terms does not include performances or failures to perform which are honest mistakes or which are merely inadvertent. The term includes, but does not require, performances or failures to perform which result from a criminal or evil intent or from a specific intent to violate the law. The knowing or willful nature of conduct may be established by plain indifference to or reckless disregard of the requirements of law, regulations, orders, or terms of a lease. A consistent pattern of performance or failure to perform also may be sufficient to establish the knowing or willful nature of the conduct, where such consistent pattern is neither the result of honest mistake or mere inadvertency. Conduct which is otherwise regarded as being knowing or willful is rendered neither accidental nor mitigated in character by the belief that the conduct is reasonable or legal.

4. Section 2920.1 is revised and §§ 2920.1–1 and 2920.1–2 are added to read:

§ 2920.1 Uses.

§ 2920.1–1 Authorized use.

Any use not specifically authorized under other laws or regulations and not specifically forbidden by law may be authorized under this Part. Uses which may be authorized include residential, agricultural, industrial, and commercial, and uses that cannot be authorized under title V of the Federal Land Policy and Management Act or section 28 of the Mineral Leasing Act. Land use authorizations shall be granted under the following categories:

(a) Leases shall be used to authorize uses of public lands involving substantial construction, development, or land improvement and the investment of large amounts of capital which are to be amortized over time. A lease conveys a possessory interest and is revocable only in accordance with its terms and the provisions of § 2920.9–3 of this title. Leases shall be issued for a term, determined by the authorized officer, that is consistent with the time required to amortize the capital investment.

(b) Permits shall be used to authorize uses of public lands for not to exceed 3 years that involve either little or no land improvement, construction, or investment, or investment which can be amortized within the term of the permit. A permit conveys no possessory interest. The permit is renewable at the discretion of the authorized officer and may be revoked in accordance with its terms and the provisions of § 2920.9–3 of this title. Permits shall be issued on a form approved by the Director, Bureau of Land Management, that has been filed by the applicant with the appropriate Bureau of Land Management office.

(c) Easements may be used to assure that uses of public lands are compatible with non-Federal uses occurring on adjacent or nearby land. The term of the easement shall be determined by the authorized officer. An easement granted under this Part may be issued only for purposes not authorized under title V of the Federal Land Policy and Management Act or section 28 of the Mineral Leasing Act.

(d) No land use authorization is required under the regulations in this Part for casual use of the public lands.

§ 2920.1–2 Unauthorized use.

(a) Any use, occupancy, or development of the public lands, other than casual use as defined in § 2920.0–5(k) of this title, without authorization under the procedures in § 2920.1–1 of this title, shall be considered a trespass. Anyone determined by the authorized officer to be in trespass on the public lands shall be notified of such trespass and shall be liable to the United States for:

(1) The administrative costs incurred by the United States as a consequence of such trespass; and

(2) The fair market value rental of the lands for the current year and past years of trespass; and

(3) Rehabilitating and stabilizing the lands that were the subject of such trespass, or if the person determined to be in trespass does not rehabilitate and stabilize the lands determined to be in trespass within the period set by the authorized officer in the notice, he/she shall be liable for the costs incurred by the United States in rehabilitating and stabilizing such lands.

(b) In addition, the following penalties may be assessed by the authorized officer for a trespass not timely resolved under paragraph (a) of this section and where the trespass is determined to be:

(1) Nonwillful, twice the fair market rental value which has accrued since the inception of the trespass, not to exceed

Published in 52 F.R. 49114, December 29, 1987 - Effective January 28, 1988

a total of 6 years; or

(2) Knowing and willful, three times the fair market rental value which has accrued since the inception of the trespass, not to exceed a total of 6 years.

(c) For any person found to be in trespass on the public lands under this section, the authorized officer may take action under § 2920.9–3 of this title to terminate, revoke, or cancel any land use authorization issued to such person under this Part.

(d) Failure to satisfy the liability and penalty requirements imposed under this section for unauthorized use of the public lands may result in denial of:

(1) A use authorization under this Part; and

(2) A request to purchase or exchange public lands filed under Subparts 2711 and 2201 of this title.

(e) Any person who knowingly and willfully violates the regulations in this Part by using the public lands without the authorization required by this part, in addition to the civil penalties provided for in this part, may be subject to a fine of not more than $1,000 or imprisonment of not more than 12 months, or both under Subpart 9262 of this title.

(f) Any person adversely affected by a decision issued under this section, may appeal that decision under the provisions of Part 4 of this Title.

PART 9260—[AMENDED]

5. The authority citation for Part 9260 continues to read:

Authority: 16 U.S.C. 433; 16 U.S.C. 460 1–6a; 16 U.S.C. 670 g–n; 16 U.S.C. 1241–1249; 16 U.S.C. 1331 et seq.; 18 U.S.C. 3410; 18 U.S.C. 1851–1853; 43 U.S.C. 315 et seq.; 43 U.S.C. 315(a); 43 U.S.C. 315(c); 43 U.S.C. 1061–1064; 43 U.S.C. 1334; 43 U.S.C. 1701 et seq.; 43 U.S.C. 1733.

6. Part 9260 is amended by adding Subpart 9262 to read:

Subpart 9262—Land Resource Management

§ 9262.0–3 Authority.

The provisions of this subpart are issued under sections 302, 303 and 310 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1732, 1733, 1740).

§ 9262.1 Penalties for unauthorized use of public lands.

Any person who knowingly and willfully violates the regulations in Part 2920 of this title by using the public lands without the authorization required by that part may be required to appear before a designated United States magistrate and may be subject to a fine of not more than $1,000 or imprisonment of not more than 12 months, or both.

(43 CFR 2920.1–2)

November 10, 1987.

J. Steven Griles,

Assistant Secretary of the Interior.

[FR Doc. 87–29700 Filed 12–28–87; 8:45 am]

#2603.

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA-320-08-4212-02; Circular No. 2603]

43 CFR Parts 2920 and 9260

Leases, Permits and Easements and Criminal Law Enforcement; Amendment To Provide Procedures for Action for Unauthorized Use of the Public Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking provides procedures for dealing with authorized use of the public lands for agricultural, industrial, residential, or commercial purposes where the user has not obtained a lease, license, or easement authorizing such use. These procedures will protect the public lands and their resources from unauthorized use, which deprives the United States of a fair return for the use of its lands.

EFFECTIVE DATE: January 28, 1988.

ADDRESS: Any inquiries or suggestions should be sent to: Director (320) Bureau of Land Management Room 3643, Main Interior Bldg. 1800 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Ralph Conrad, (202) 343-8693.

SUPPLEMENTARY INFORMATION: A proposed rulemaking amending 43 CFR Parts 2920 and 9260 was published in the Federal Register on July 27, 1987 (52 FR 28024), with a 30-day comment period. During the comment period, comments were received from 10 sources, seven from Federal agencies, two from law firms, and one from an association.

The comments were not negative, but raised specific questions concerning the proposed rulemaking. As an example, one comment expressed a view that the rulemaking should not diminish individual rights. The proposed rulemaking was aimed at controlling unauthorized uses of the public lands and, therefore, does not infringe on legitimate uses of the public lands.

Another comment suggested that the final rulemaking amend the proposed rulemaking to make it clear that persons cited for civil penalties under the provisions of the rulemakings have the right to appeal that citation under 43 CFR Part 4. The right of appeal of a decision by an official of the Bureau of Land Management is available to any adversely affected party, including a person determined to have made an unauthorized use of the public lands. However, in order to clarify this point, the final rulemaking has adopted a provision setting forth this right of appeal. This same comment also suggested that the final rulemaking contain language differentiating between civil and criminal penalties. The final rulemaking has been amended to provide this differentiation. This amendment of the final rulemaking also will answer several comments regarding when civil or criminal penalties would be applicable.

One of the comments recommended that the final rulemaking include definitions of the terms "occupancy," "resources," and "nuisance." This recommended change would have the effect of broadening the scope of the rulemaking beyond those uses which are currently authorized under 43 CFR Part 2920 by including littering, resource destruction, etc., as violations that will be subject to penalty under the provisions of this final rulemaking. The recommendation has not been adopted because it would broaden the scope of the final rulemaking beyond the uses authorized by 43 CFR Part 2920.

One comment recommended that the final rulemaking amend the proposed rulemaking to provide for injunctions against unauthorized use, occupancy, or development of the public lands. Both the proposed and final rulemakings cite section 303 of the Federal Land Policy and Management Act as authority. Section 303 authorizes the use of an injunction proceeding in connection with unauthorized use of the public lands. Therefore, this process is already available to the authorized officer who deems its use appropriate. This recommendation has not been adopted by the final rulemaking.

One comment suggested that the final rulemaking amend the proposed rulemaking to allow the waiver of damages and administrative costs in those situations where the unauthorized user either vacates the public lands or accepts a land use authorization under the provisions of 43 CFR Part 2920. The Department of the Interior must comply with the provisions of the Federal Claims Collection Act in waiving or compromising debts owed the United States. Therefore, this suggested change cannot be adopted by the final rulemaking because the basis for waiving or compromising a claim resulting from an unauthorized use is set by the Federal Claims Collection Act.

Three comments raised questions about the use of the phrase "not timely resolved," in the proposed rulemaking and it was suggested that the phrase be defined for clarity. The final rulemaking has not adopted the suggestion that the phrase "not timely resolved" be defined. The phrase is used in an effort to give the Bureau of Land Management official responsible for dealing with an unauthorized use the broadest possible discretion in resolving that unauthorized use on a fair and equitable basis. The ultimate decision on whether or not an unauthorized use has been resolved in a timely manner will lie with the appropriate State Director.

Two comments on the proposed rulemaking suggested that damages be substituted for fair market value rental by the final rulemaking. The comments felt that the process under which fair market rental is established after the deduction of credits for water, insurance, fertilizer, seed, and other costs does not give the United States an adequate return for the use of the public lands. The comments made the point that in their opinion the use of fair market value rental as the standard for payment deprives the United States, an unwilling landlord, of adequate compensation for the use of the public lands. Fair market value rental is determined pursuant to established appraisal procedures, whereas damages are non-definitive and open to broad interpretation. The final rulemaking has not adopted this suggestion and action will be taken after this final rulemaking becomes effective to standardize the appraisal methods that are used to determine fair market value rental, thereby providing the United States with adequate reimbursement for the unauthorized use of the public lands.

One comment suggested that the penalty provisions of the proposed rulemaking should be expanded by the final rulemaking to permit termination of any Bureau of Land Management authorization that is discretionary when it has been determined that there has been an unauthorized use of the public lands. This suggestion has not been adopted by the final rulemaking because of the view of the Bureau that the proposed and final rulemakings provide sufficient deterrence.

One of the comments suggested that Federal-private landownership patterns and the topography of the lands frequently lead to use of the public lands either out of necessity or as a convenience. This comment went on to suggest that the Bureau of Land Management not be "hard-nosed" in its pursuit of these types of unauthorized uses of the public lands. The Bureau is aware of the problems presented in the comment and will endeavor to work out administrative solutions that are appropriate to the circumstances.

The provisions of this final rulemaking are applicable only to activities

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Circular No. 2604; AA-220-88-4322-02]

43 CFR Part 4100

Grazing Administration; Exclusive of Alaska; Grazing Fees for 1988

Under the authority of the Taylor Grazing Act of 1934, as amended (43 U.S.C. 315 *et seq.*), the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1701 *et seq.*), the Public Rangelands Improvement Act of 1978 (43 U.S.C. 1901 *et seq.*), and Executive Order 12548 of February 1986, it is proposed to amend § 4130.7, Part 4100, Group 4100, Subchapter D, Chapter II of Title 43 of the Code of Federal Regulations as set forth below:

List of Subjects in 43 CFR Part 4100

Administrative practice and procedure, Livestock, Penalties, Range management.

PART 4100—[AMENDED]

1. The authority citation for 43 CFR Part 4100 continues to read as follows:

Authority: 43 U.S.C. 315, 315a–315r, 1701 *et seq.*, 1181d, and 98 Stat. 1837.

2. Section 4130.7–1 is amended by adding paragraphs (a)(1), (a)(2) and (a)(3) to read as follows:

§ 4130.7–1 Payment of fees.

(a) * * *

(1) Except as provided in paragraphs (a)(2) and (a)(3) of this section, the calculated fee or grazing fee shall be equal to the $1.23 base established by the 1966 Western Livestock Grazing Survey multiplied by the result of the Forage Value Index (computed annually from data supplied by the National Agricultural Statistics Service) added to the Combined Index (Beef Cattle Price Index minus the Prices Paid Index) and divided by 100; as follows:

$$CF = \$1.23 \times \frac{FVI + BCPI - PPI}{100}$$

CF = Calculated Fee (grazing fee) is the estimated economic value of livestock grazing, defined by the Congress as fair market value (FMV) of the forage;

$1.23 = The base economic value of grazing on public rangeland established by the 1966 Western Livestock Grazing Survey;

FVI = "Forage Value Index" means the weighted average estimate of the annual rental charge per head per month for pasturing cattle on private rangelands in the 11 Western States (Montana, Idaho, Wyoming, Colorado, New Mexico, Arizona, Utah, Nevada, Washington, Oregon, and California) (computed by the National Agricultural Statistics Service from the June Enumerative Survey) divided by $3.65 and multiplied by 100;

BCPI = "Beef Cattle Price Index" means the weighted average annual selling price for beef cattle (excluding calves) in the 11 Western States (Montana, Idaho, Wyoming, Colorado, New Mexico, Arizona, Utah, Nevada, Washington, Oregon, and California) for November through October (computed by the National Agricultural Statistics Service divided by $22.04 per hundred weight and multiplied by 100; and

PPI = "Prices Paid Index" means the following selected components from the National Agricultural Statistics Service's Annual National Index of Prices Paid by Farmers for Goods and Services adjusted by the weights indicated in parentheses to reflect livestock production costs in the Western States: 1. Fuels and Energy (14.5); 2. Farm and Motor Supplies (12.0); 3. Autos and Trucks (4.5); 4. Tractors and Self-Propelled Machinery (4.5); 5. Other Machinery (12.0); 6. Building and Fencing Materials (14.5); 7. Interest (6.0); 8. Farm Wage Rates (14.0); 9. Farm Services (18.0).

(2) Any annual increase or decrease in the grazing fee for any given year shall be limited to not more than plus or minus 25 percent of the previous year's fee.

(3) The grazing fee for any year shall not be less than $1.35 per animal unit month.

* * * * *

J. Steven Griles,

Assistant Secretary of the Interior.

January 27, 1988.

[FR Doc. 88–2088 Filed 2–1–88; 8:45 am]

Published in 53 F.R. 2984, February 2, 1988 - Effective February 2, 1988

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 4100

[Circular No. 2604; AA-220-88-4322-02]

Grazing Administration, Exclusive of Alaska; Amendments to the Grazing Regulations

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking amends the regulations for the management of grazing on the public lands under the jurisdiction of the Bureau of Land Management. These regulations were issued by the Department of the Interior as proposed rulemaking and published in the **Federal Register** on May 20, 1987 (52 FR 19032) with an initial public comment period of 60 days. In order to correct omissions from, and an inadvertent editing error in, the proposed amendments, the comment period was extended an additional 30 days (52 FR 27321) ending on August 19, 1987, to allow the public a reasonable opportunity to review the corrections. Two thousand one hundred eighty-six comments were received and considered during the development of this final rulemaking. This final rulemaking revises the regulations in 43 CFR Group 4100 to clarify the role of land use plans as they relate to the authorization and modification of grazing use of the public lands, clarifies the way in which livestock will be managed in cooperation with permittees and lessees, and also clarifies the provisions of the regulations on unauthorized grazing.

EFFECTIVE DATE: April 28, 1988.

ADDRESS: Inquiries or suggestions should be sent to: Assistant Director—Land & Renewable Resources (220), Bureau of Land Management, Room 5626, Main Interior Building, 1800 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Wilton A. Peterson or Dee R. Ritchie, (202) 653-9195 or Mark E. Lawrence, (202) 343-8735.

SUPPLEMENTARY INFORMATION: This final rulemaking amends the existing regulations for managing livestock grazing as one of the multiple uses of the public lands by: Adding provisions for cancellation, suspension, and modification of Allotment Management Plans; requiring allotment management plans to prescribe livestock grazing practices that meet multiple use objectives; clarifying the relationship between the land use planning process and the livestock grazing program to ensure that land use plan objectives are achieved; adding provisions for late payment of grazing fees; reaffirming the position of the Department of the Interior on enforcement of environmental protection and conservation laws; and emphasizing that provisions prohibiting supplemental feeding will continue to require authorization in accordance with the decision in *Natural Resources, Defense Council, Inc. et al. v. Hodel, et al.*, 618 F. Supp. 848 (E.D. Cal. 1985). This final rulemaking also amends the provisions on base property and transfer of grazing preference and adds provisions suggested in the decisions of the Office of Hearings and Appeals in the cases of *George Fasselin v. Bureau of Land Management, et al.*, and *Marius Henry Mills v. Bureau of Land Management, et al.*. The proposed rulemaking included provisions for Cooperative Management Agreements (CMAs) with livestock grazing permittees/lesses. Those provisions have been withdrawn and are not included in this final rulemaking.

The proposed rulemaking was published in the **Federal Register** on May 20, 1987 (52 FR 19032), with a 60 day comment period. A notice correcting omissions from, and an inadvertent editing error in, the proposed amendments, was published in the **Federal Register** on July 20, 1987 (52 FR 27321), extending the comment period to August 19, 1987, to allow the public a reasonable opportunity to review the corrections. During the 90 day comment period, 2,186 comments were received; 1,907 from individuals; 82 from associations; 11 from state and local governments; 3 from other federal agencies; 181 from businesses and 2 from congressional offices.

Most of the public comments supported the proposed regulations with some modifications. Most commenters expressed the view that selective management, relying on good monitoring data, cooperative management, and managing livestock grazing on public rangelands according to the principles of multiple use and sustained yield, will strengthen the Bureau of Land Management's (BLM) ability to manage the public lands. The comments also supported cost effective range improvements; changing the use of the term "undue and unnecessary degradation" where used in the proposed rulemaking and moving away from the term and concept of "grazing capacity". The comments generally supported permittees signing an actual use form but objected to permittees having to certify actual use, and expressed support regarding base property, preference, and permit/lease relationships; generally supported allotment management planning, but wanted the concept expanded to include coordinated resource management planning and other cooperative efforts; generally supported billing procedures that require prompt payment of fees, but were concerned that late fee penalties were excessive; and suggested that compensation to the Government for nonwillful unauthorized grazing use should be at the current public land grazing fee rate charged for an animal unit month (AUM).

Commenters opposing the proposed regulations expressed views that the proposed rules would eliminate many of the policies and procedures controlling grazing and protecting wildlife habitats; elimination of the concept of "grazing capacity" would allow overgrazing; the proposed regulations weakened the land use planning requirement for allocation of forage to multiple uses, especially wildlife and watershed, and would allow all forage to be given to livestock; the penalties against livestock operators for violation of the Wild Horse and Burro Act and other federal and state environmental laws should not be removed; the trespass regulations should be strengthened and not reduced as proposed; CMAs should not be implemented; an environmental impact statement with full public disclosure should be prepared on the proposed grazing regulations. Several other opposing comments suggested that livestock grazing be eliminated from the public lands.

In reviewing all comments it became evident that many commenters did not fully understand the procedures in the proposed rulemaking. Moreover, it is clear that some commenters did not fully understand the concept of "multiple use." The BLM manages the public rangelands by statutory authority i.e., the Taylor Grazing Act, Federal Land Policy and Management Act, Public Rangelands Improvement Act and others. These statutes give the BLM authority and responsibility to establish policy, provide for land use planning, and manage all uses and activities on public lands. The Federal Land Policy and Management Act (FLPMA) defines multiple use as "the management of the public lands and the various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people." It further defines multiple use as "a combination of balanced and diverse resource uses that takes into account the long-term needs of future generations for renewable and

nonrenewable resources, including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific and historical values." Those who advocate arbitrarily removing some of these uses and activities from the public lands are suggesting that the BLM take a position of not fulfilling its multiple use mandates in areas where, through land use planning, livestock grazing has been determined to be compatible with other uses and land use planning objectives. In order to allocate the public lands for these competing uses, FLPMA provides for "the development and revision of land use plans." Some of the principles prescribed in FLPMA (section 202(c)) 43 U.S.C. 1712(c) and followed by BLM in the development of these land use plans are to "use and observe the principles of multiple use and sustained yield" and "use a systematic interdisciplinary approach to achieve integrated consideration of physical, biological, economic, and other sciences." Once objectives are identified and decisions as to resource uses have been made through the land use planning process, site specific management plans are developed to manage the resources. In the range management/livestock grazing resource program the site specific planning is accomplished by allotment management plans (a term defined in section 103(k) of FLPMA), coordinated resource management, and other cooperative management efforts, as provided for in section 2 of the Taylor Grazing Act and section 307(b) of FLPMA. Under these statutes the BLM is required to develop regulations to manage these resources on a multiple use-sustained yield basis. The purpose of the grazing regulations is to manage the livestock grazing program as an integral part of the overall multiple use of the public lands.

As to the suggestion in the comments that the BLM prepare an environmental impact statement on the final rulemaking, the Department of the Interior has determined that this is unnecessary. The final rulemaking will not result in new or significant impacts; it does not constitute a major Federal action significantly affecting the quality of the human environment. This is further supported by an environmental assessment completed on the rulemaking. In addition, 137 site-specific environmental impact statements have already been completed on grazing use covering 169,809,000 acres of public rangelands that are subject to the grazing program encompassed by this rulemaking. By the end of 1988, five additional environmental impact statements will have been completed on grazing use involving another 4,042,000 acres, for a total of 142 area specific environmental impact statements on 173,851,000 acres. These environmental impact statements discuss the effects of livestock grazing and provide site-specific analysis, allotment or area specific objectives, and site-specific grazing proposals, and address site-specific issues, resource problems, conflicts, and management actions on public rangelands.

Comments on specific provisions of the rulemaking follow.

Section 4100.0-5 Definitions.

Many comments were received concerning the modification or deletion of some of the definitions. Several commenters opposed the definition of "actual use" in the regulations. After consideration of these comments, the final rulemaking has modified the definition of "actual use" to read "where, how many, what kind or class of livestock and how long livestock graze on an allotment." This information is necessary to determine how the vegetation resource is responding to the current grazing prescription and whether the management objectives are being achieved.

Several comments suggested it is not necessary to require the permittee/lessee to certify the accuracy of the "actual use report". Others commented that users cannot be trusted to give an accurate report. After consideration of the comments, it was determined that the definition of "actual use report" should be modified to indicate that the actual use report is a report of the actual livestock use submitted by the permittee/lessee. In actual practice, the livestock permittee/lessee certifies the accuracy of the actual use information when he/she signs the actual use forms and the inclusion of the word "certified" provides no additional benefit to the agency or the operator. Where problems occur, and it is necessary, the BLM will make livestock counts to verify the actual use.

The definition of "cooperative management agreements" has been removed because the provisions in § 4120.1 have been removed from this final rulemaking. This is discussed later in this preamble.

Several comments regarding "land use plan" expressed concern that the definition and process would be diluted under the proposed rulemaking. The definition has been modified in the final rulemaking to read "a resource management plan or a management framework plan which is being followed until replaced by a resource management plan." Management framework plans, as well as Resource Management plans do meet the land use plan requirements of the Federal Land Policy and Management Act and establish management direction for resource uses of public lands.

Many comments expressed concern over the deletion from the proposed rulemaking of the definition of the term "Livestock Grazing Capacity". Many comments requested that the term be retained, while several concurred in the removal of the definition. After careful consideration and review, the final rulemaking has adopted the "livestock carrying capacity" definition proposed by the Society for Range Management and others. Livestock Carrying Capacity is the maximum stocking rate possible without damage to vegetation or related resources. Carrying capacity may vary from year to year on the same area due to fluctuating forage production. The term "carrying capacity" reflects more clearly the intention to tie actual use to capability of land than does the term "grazing capacity." This definition connotes flexibility to adjust stocking rates as, through monitoring, these changes are determined to be needed to meet land use plan objectives. In order to bring the provisions of other sections into conformance with this change, those sections are being amended to change "livestock grazing capacity" to "livestock carrying capacity."

Many comments were received concerning the definition of the term "monitoring" and expressed concern regarding use of the phrase "periodic observation" in the definition. After careful consideration, it was determined that the first sentence in the definition of "monitoring" in the proposed rulemaking should be modified by reinserting the word "orderly" as it exists in the present regulations. The reinsertion of this word in the final rulemaking connotes a planned and scheduled system of monitoring. Also, the word "or" in the proposed rulemaking is replaced by the word "and" to indicate that monitoring is both periodic observation and orderly collection of data to evaluate grazing management actions and their effectiveness in meeting management objectives. This will allow for flexibility in monitoring custodial or category "C" allotments, and yet provide some observed and recorded responses by the range professional to grazing use. These category ("C") allotments, and some allotments in the maintain ("M") category, do not require detailed monitoring because a determination has been made on the basis of previous

monitoring that these allotments are doing well and will continue to do so under existing grazing management practices. The use of periodic (usually yearly) observation can detect subtle changes that may suggest that more intensive monitoring is needed.

Several commenters expressed the view that the present language in the definition of the term "range improvement" be retained but that some modification be made by adding wording to include stabilization of soil and watershed conditions. The proposed definition of range improvement is broad and would encompass these concepts. It has been determined that the definition contained in the proposed rulemaking is adequate and accurate. The language of the proposed rulemaking is retained in the final rulemaking. It is, with one modification, the definition cited in the Public Rangelands Improvement Act.

A few comments were received concerning the inclusion in the proposed rulemaking of the definition of the term "rangeland studies" and suggested modification to ensure consistency and credibility with other agencies and scientific communities regarding accepted rangeland study methods. The definition of "rangeland studies" in the final rulemaking has been modified to recognize that they include any study method accepted by the authorized officer for collecting data on actual use, utilization, climatic conditions, other special events, and trend to determine if management objectives are being met. There are several accepted methods to obtain this study data and developing a laundry list of accepted methods is unnecessary in this final rulemaking.

A few comments were received concerning the addition of the definition of the term "trend" and how it will be used by the agency. The final rulemaking modifies the definition in response to the comments, to indicate that "trend" is the directional change over time, either toward or away from desired management objectives. This change will be measured, over time, in kind, proportion or the amount of desired plant species.

A few comments were received concerning the definition of the term "utilization" and suggested that utilization should be determined at the end of the growing season instead of at the end of a grazing period. After careful consideration of the comments, the definition has been modified to provide that "utilization" is both the percentage of the forage consumed by livestock during a specified period, and the livestock grazing utilization pattern on the allotment. The suggestion that utilization be measured at the end of the plant growing season has not been adopted because it is not feasible in that it will not allow for a determination of use levels due to plant regrowth. In order for utilization monitoring to be useful for management of rangelands, it must measure the amount of forage consumed by livestock during their use of an allotment or part of an allotment over a specified period of time. The definition adopted in the final rulemaking would indicate more effectively livestock use levels and grazing patterns.

Section 4100.0–8 Land use plans.

Many comments were received concerning land use planning. Most comments suggested that the proposed rulemaking indicated that land use planning was only a guide for livestock grazing management and consequently weakened the land use planning process in the BLM. They urged that all grazing be managed under the multiple use-sustained yield concept. Many other comments supported this section as proposed because they felt that it now clearly ties the livestock grazing regulations and policies to the land use planning process. They felt this relationship must be strengthened to make clear that the land use plan allocates vegetation for livestock forage and competing resource uses. They also suggested that the land use plan needs to identify the current level of livestock grazing use, establish the objectives for grazing management, and outline how the objectives will be met. After careful consideration of all comments regarding land use plans, the Department of the Interior reaffirms that, with respect to livestock grazing, land use plans will establish allowable resource uses (these may be single uses or combinations of uses), related levels of production or use to be maintained, areas of use, and resource condition goals and objectives to be obtained. The plans also set forth program constraints and general management practices needed to achieve management objectives. The livestock grazing element of the land use plan is developed in coordination with all interested parties and in consultation and cooperation with grazing permittees. Livestock grazing activities and management actions will be in conformance with the land use plan. ("Conformance" is as defined in 43 CFR 1601.0–5(b)). Existing livestock grazing management practices may be adjusted during plan implementation as the result of monitoring and other management actions that are consistent with the land use plan.

Section 4110.2–1 Base property.

Many comments were received concerning base property. Many of the comments stated that loss of ownership or control of base property should not result in the automatic termination of a person's grazing preference and took the position that the preference right belongs to the permittee. Several comments were in favor of the base property requirement in the existing regulations because this provides safety to the livestock industry from sale of preference rights and permits outside the livestock industry. Other commenters suggested a 90-day grace period after loss of base property during which a person can transfer the grazing preference and permits before losing them. Finally, several commenters advocated the reestablishment of the base property commensurability requirements. Many of these comments may have resulted from an error in the proposed rulemaking. Section 4110.2–1(d), refers to termination of the "grazing preference" upon loss of ownership or control of base property. This provision should have stated only that the permit or lease shall be terminated upon loss of ownership or control of base property. The permit or lease must be terminated because the permittee/lessee no longer meets the mandatory qualification requirements. It should be clearly understood that the grazing preference is attached to the base property. This is a long-standing rule supported by court decisions and consistent with statutory language. The final rulemaking has been modified, however, in paragraph (d) of this section by adding the phrase "or control" after the word ownership, in the first line. The Department has determined that this is the only change necessary in the final rulemaking and that the provision, as modified, is consistent with the intent of the Taylor Grazing Act.

Section 4110.2–2 Specifying grazing preference.

Many comments were received concerning this section of the proposed rulemaking. In the existing regulations this section is titled "grazing preference allocation." Some commenters suggested that the word "allocation" not be deleted, because without it the regulation would allow for all the available forage to be given to livestock and not be shared with wild horses and burros and other uses. After studying this issue it has been decided that the word "specified" is more accurate than "allocation." Allocation of forage is accomplished during the land use

planning process, and consists of a determination of how much of the forage will go to satisfaction of the grazing preference and will be allotted as either active use or suspended use. Section 4110.2–2 then provides for specifying or restating in the permit or lease the amount of the grazing preference, including what portion of the preference is active use and what portion is suspended use. The level of active use is based on the availability of forage as determined in the land use plan and through monitoring.

Many commenters also questioned deleting paragraph (d), "Allotments". During review of the comments, it was determined that reviewers may have been confused about this subject. In the proposed rulemaking, item 6 stated that § 4110.2–2 was revised and contained paragraphs (a) through (c). No reference was made to paragraph (d). Item 9 on the same page, stated that § 4110.2–4 was added in the proposed rulemaking and its title was "Allotments." However, there was no specific statement that paragraph (d) in § 4110.2–2 had been moved to become the new § 4110.2–4. It was determined that the separate § 4110.2–4 would more effectively highlight the importance and intent of this section than keeping the provision as a subsection with no change in the wording. Further, to better emphasize both the importance of land use planning and its original intent to strengthen the process in the grazing regulations, as suggested by the comments, the wording in § 4110.2–2(a) has been modified in the final rulemaking by adding a third sentence to indicate that active use shall be based upon the amount of forage available for livestock grazing established in the land use plan.

Section 4110.2–3 Transfer of grazing preference.

Many comments were received concerning the proposed provisions for transfer of the grazing preference. Several suggested that persons with an encumbrance against the base property would not get by regulation any right that they would not already have under law; therefore, this provision should not be adopted in the final rulemaking. Others suggested that in cases of transfer, where portions of the original base property become the new base property, and where the security is held by a lienholder, the lienholder does not need to give consent. Some commenters suggested that the authorized officer be able to grant extensions of time to qualify for a transfer if the delay is due to the operation of law, not just probate proceedings. After careful consideration of the comments received, it was determined that the provisions of the proposed rulemaking are adequate to protect the lienholders of record because a base property pledged as security for a loan by a permittee has the grazing preference attached to it. By operation of law, the permittee cannot change the status of the property without the concurrence of the lienholder. The concern regarding transfers, where only a portion of the original base property is involved, is adequately covered in existing regulations under § 4110.2–3(c). Where extensions of time are required in transfers through operation of law, adequate provisions are provided to the authorized officer in § 4110.2–3(e). During review of the comments, and consideration of modifications for this section, it was discovered that there was an error in the proposed regulations. Instead of using the word "transferor," or the seller of the property, the proposed rulemaking used "transferee," or the buyer of the property, which is incorrect. In order to correct this error and further help clarify the intent of § 4110.2–3 regarding transfer of grazing preferences from one base property to another, an addition to the final rulemaking has been made in § 4110.2–3(c) because of public comments. The first sentence of the section in the final rulemaking has been corrected to provide that if a grazing preference is being transferred from one base property to another base property, the transferor shall own or control the base property from which the grazing preference is being transferred, and file a properly completed transfer application with the BLM for approval. This section was intended to give the authorized officer the flexibility necessary to allow for prudent action regarding the interaction between lenders, court actions, government actions, and permittee/lessee obligations.

Section 4110.2–4 Allotments.

This is a new section that was added in the proposed rulemaking by moving paragraph (d) in its entirety from § 4110.2–2. It was moved because it does not apply to specifying grazing preference. The change will be retained in the final rulemaking. Specific reasons for moving paragraph (d) and adding this section are discussed in § 4110.2–2 above.

Section 4110.3 Changes in grazing preference.

Several comments were received concerning changes in this section. A few commenters suggested removing the phrase "grazing preference" because they felt that it implied that livestock grazing would be preferred over other uses and that BLM would not allocate forage to uses other than livestock. Some commenters also felt the existing regulations are sufficient. The commenters also suggested that the title of the section be changed to "Changes in forage allocation." A few commenters also wanted to amend the section so that changes in active use could only be made following coordination, consultation, and cooperation with the affected grazing permittees. Finally, some commenters objected to the phrase "undue or unnecessary degradation" as applied to grazing use because it implied that grazing tends to cause "due and necessary degradation" and that grazing is accordingly, a destructive activity. It was also suggested that the phrase is not well defined and could lead to legal action to require clarification of the use of the phrase. It was suggested the phrase "undue or unnecessary degradation" be deleted and replaced with a different phrase. After consideration of all the above comments, it was decided, that the title of the section should be changed from "changes in grazing preference" to "changes in grazing preference status" in the final rule. There has been some confusion over the term "grazing preference." Grazing preference consists of both active use and suspended use. Grazing preference on particular allotments was established pursuant to the Taylor Grazing Act (43 U.S.C. 315 *et seq.*) based on historic use. It does not change. However, through land use planning and or monitoring the authorized officer may identify the need for changes in the preference status or mix of active versus suspended use. In response to the concerns regarding the requirement to coordinate, consult, and cooperate with permittees prior to any change in active use, it was concluded that § 4110.3–1(c) of the existing regulation sufficiently provides for this.

The recommendation of the commenters to delete the phrase "undue or unnecessary degradation" has been adopted and the phrase has been replaced with the phrase: * * * "unless the change is required in an applicable land use plan or is necessary to manage, maintain or improve rangeland productivity," as provided by sections 2(b)(2) and 4(b) of PRIA. The phrase "undue and unnecessary degradation" is used in FLPMA sections 302(b) and 602(c). It is a legal standard applicable in certain situations, for example, where grandfathered grazing or mining activities occur in wilderness study

BEST COPY AVAILABLE

areas. Used out of context in this rulemaking, it apparently has caused confusion and created the possible implication that normal grazing activity causes degradation of the range. The term is being deleted because its use here may be misleading. BLM of course remains subject to the provisions of sections 302(b) and 602(c) of FLPMA. At times, accordingly, the applicable legal standard may be one based on accordance of "undue and unnecessary degradation." However, the phrase has been replaced with language that more clearly indicated that changes in active use may be triggered by various management objectivies.

Section 4110.3–1 Increasing active use.

A few commenters were concerned about the use of the word "apportioned" rather than "allocation" in paragraphs (a), (b), and (c) of this section of the proposed rulemaking. They concluded that additional forage should be equally shared with all other uses. Some felt that paragraph (a) should be changed to allow only for nonrenewable allocation of forage, while others felt paragraph (c)(1) is unclear as to the order of priority for allocating additional forage. After reviewing these comments, it has been concluded that the word "apportioned" is proper in this instance because the "allocation" of land and uses is accomplished in the land use plan, and forage available to livestock grazing must then be apportioned or divided among competing permittees in an allotment. The forage available for livestock grazing is forage that was allocated to livestock in the land use plan.

The concern regarding whether an authorization should be renewable or nonrenewable should not be a problem if, in fact, the forage is available. It would not be used by the permittee, or lessee, and a secondary user would not be allowed to use that resource for an indefinite period of time. Therefore, the forage available could only be authorized for a short period of time on a nonrenewable basis. It also has been concluded that paragraph (a) of this section is adequate and the language in the proposed rulemaking has been adopted in the final rulemaking. After careful consideration of the comments expressing concern regarding paragraph (c)(1), it was concluded that the wording is clear. The intent of this paragraph is to give the first priority to those permittees/lessees who invest in rangeland improvements which result in additional livestock forage, according to their proportional share in providing for the improvement.

Section 4110.3–2 Modifying or suspending grazing preference.

Many comments were received concerning the modification or suspension of grazing preference made by the proposed rulemaking. Several suggested that the 1984 regulations should be retained with the additional language of the proposed rulemaking. Some commenters suggested that the change in the section's title does not reflect the need to reduce actual livestock numbers, and the title in the existing regulation is more concise and specific. Many believed that a permittee/lessee should be given the option of taking voluntary nonuse in the amount and period of time deemed necessary by all parties involved. A few commenters suggested retaining the section in the existing regulations, especially paragraph (b) pertaining to achieving multiple use management, because elimination of this section would make it more difficult for the Bureau to effect an actual reduction in livestock grazing. Other commenters were of the view that paragraph (c) is unnecessary. Finally, a few commenters fully supported the changes made by the proposed rulemaking, but recommended several minor modifications in the wording to provide for monitoring livestock grazing use before decreasing active use. They suggested that the BLM must use more than one monitoring element prior to effecting a decrease.

After careful consideration of the comments, it was determined that the final rulemaking will adopt a change in the title of this section by replacing the phrase "modifying or suspending grazing preference" with the phrase "decreasing active use". The title of the section, as modified, will more effectively explain the purpose of the section. It has also been determined that the concerns expressed by many of the comments regarding the elimination of multiple use management in the proposed rulemaking are ill-founded. It is the policy and intent of the Department of the Interior to strengthen the concepts of multiple use as provided for in the Federal Land Policy and Management Act. This policy is reflected in the land use planning process which provides for the management of livestock grazing along with all other uses on the public lands. However, as suggested by commenters, the final rulemaking has modified the section to clarify the policy. Paragraph (a) of the proposed rulemaking is adopted without change in the final rulemaking. Paragraph (b) has been modified in the final rulemaking to provide that when monitoring shows active use is causing an unacceptable level or pattern of utilization, or exceeds the livestock carrying capacity as determined through monitoring, active use shall be reduced, or management practices changed as necessary, to maintain or improve rangeland productivity. Paragraph (c) is modified in the final rulemaking to provide the flexibility needed to make adjustments in use levels on a timely basis. It will now indicate that, where active use is reduced the balance may be held in suspension or in nonuse for conservation purposes until it is determined that active use may resume.

Section 4110.3–3 Implementing changes in grazing preference.

A few comments concerning changes in grazing preference suggested that the existing regulations be retained, and objected to the concept of graduated reductions for livestock use regardless of existing resource conditions. Some commenters suggested changing the phrase "grazing preference" to "active use". After consideration of the comments, it was decided that the final rulemaking would change the title of this section from "implementing changes in grazing preference" to "implementing changes in active use." This change will make this title consistent with §§ 4110.3, 4110.3–1 and 4110.3–2. Further, in response to the comments, it was concluded that unless there is an emergency which will cause irreparable damage to the resource, the concept of gradually implementing changes in active use is prudent in light of needed flexibility for the livestock industry and lending institutions, and the likely difficulties that permittees might have in making rapid changes in operations.

Section 4110.4–1 Additional land acreage.

Several comments concerned the provisions of this section of the proposed rulemaking. Most suggested that the language of the existing regulations be retained but modified to give specific mention to "critical wildlife habitat and wild horses/burros." Others commented on the word, "apportioned" versus "allocated." These comments have been considered and it has been decided that the language of the proposed rulemaking should be modified to make clear that this section is discussing active use. This paragraph of the proposed rulemaking provides consistency with current policy and legislative guidance indicated in § 4130.1–2. The word "apportioned" is used in the final rulemaking to differentiate from the allocation process that occurs during the land use planning

process. The matter of wildlife and wild horses/burros habitat is also considered during the land use planning process.

Section 4120.1 Cooperative management agreement.

More comments were received concerning the cooperative management agreement than any other portion of the proposed rulemaking. Most favored the concept of cooperative management as being necessary to accomplish the goals and objectives of overall multiple use management and sustained yield by using livestock as one of the tools to manage vegetation resources. Most of the commenters favoring cooperative management did not specifically state that successful range management had to be accomplished by a cooperative management agreement, but felt cooperation is always superior to being in opposing and adversarial roles. Those commenters opposing the cooperative management agreement concept were concerned that the agency was relinquishing its authority and responsibility to manage the public lands. Most of those opposed also thought that the agreements gave too much discretion to private livestock interests and should not be used. It has been decided not to go forward at this time with a program of cooperative management agreements. Accordingly, the final rulemaking will remove from § 4120.1 the provision of the proposed rulemaking pertaining to cooperative management agreements. In order to bring the provisions of other sections into conformance with this change, those sections are being amended to remove all reference to cooperative management agreements. It should be noted that cooperative management agreements are used in other resource programs. Since the BLM began implementing its cooperative management policy, cooperative management agreements have been developed and implemented in cooperation with many user groups to manage other resources on the public lands, including wild horses and burros, wildlife, recreation, wilderness, and cultural values. Each of these agreements is a formal, written agreement between the Bureau of Land Management and the land user or user group for sharing management responsibilities of a resource.

Cooperative management with rangeland users has been a longstanding effort since it was first provided for under the Taylor Grazing Act of 1934 (43 U.S.C. 315 *et seq.*). Under section 2 of the Taylor Grazing Act, the Secretary of the Interior was directed to "make provisions for the protection, administration, regulation, and improvement of such grazing districts and * * * enter into such cooperative agreements, and do any and all things necessary to accomplish the purposes of this Act * * * namely to regulate their occupancy and use, to preserve the land and its resources from destruction or unnecessary injury, to provide for the orderly use, improvement and development of the range." Cooperation with public land users was further reaffirmed in the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*). Section 307(b) of the Act authorizes the Secretary, subject to the provisions of applicable law, to enter into contracts and cooperative agreements involving the management, protection and development of the public lands.

In accordance with these laws, cooperative management will continue to be a necessary and important part of BLM's range management program as well as other resource programs. It will be reflected in BLM's consultation and coordination with the affected parties. There are other established processes, and interagency agreements to facilitate coordinated management of livestock grazing and other resource activities, that do not reflect the confusion that has evolved with the cooperative management agreement initiative. Since the major objective of cooperative management can be achieved by other, better understood and accepted methods, it is not necessary to retain their use as described in the proposed rulemaking.

The provisions pertaining to cooperative management agreements have been removed from § 4120.1 and this section number is reserved in the final rulemaking.

Section 4120.2–3 Allotment management plans.

Several comments concerned allotment management plans (AMP); most favored their use. Some commenters objected to the AMP being featured as the only vehicle through which the land use planning and management objectives are achieved, and suggested that cooperative management agreements, experimental stewardship, coordinated resource management, and other cooperative efforts are equally important to achieve multiple use management objectives. After considering the comments, it was determined that allotment management plans meet the intent of section 402 (d) and (f) of FLPMA and the final rulemaking will adopt, without change, this section of the proposed rulemaking.

Section 4120.3–5 Assignment of range improvements.

The few commenters on this section of the proposed rulemaking approved the deletion of the phrase "fair market value" and the last sentence of the existing regulation. The commenters generally felt that the phrases were antiquated and unnecessary because the parties involved reach agreement on the value of the range improvements while contracting for the transfer of the grazing preference, and the authorized officer should not be a referee in a private business transaction. Without such an agreement there would not be a transfer or assignment. The final rulemaking has adopted without change the provisions of the proposed rulemaking.

Section 4130.1–2 Conflicting applications.

Most of the commenters on this section opposed the changes in the proposed rulemaking. Several of the commenters stated that although the changes were shown in the text of the proposed rulemaking, they had not been discussed in the preamble or supplementary information sections. The commenters also stated that deletion of the word "livestock" before the word "forage", and adding the phrase "for livestock" after "forage" made no sense. Objections were also made to deleting the word "allocate" and replacing it with the word "authorize". Other comments expressed the view that the amendments in the proposed rulemaking substituted a new definition for the phrase "historical use of the lands" and that deleting the current subparagraphs (b) through (f) would have far-reaching implications, and be subject to varying interpretations. They opposed these changes because they felt that such changes could lead to the exclusion of the public from the public lands. Another commenter stated that in other parts of the proposed rulemaking, the word "allocate" had been replaced with the word "apportion" and felt that it would be consistent to make the same change in this section rather than using the word "authorize".

After reviewing the comments, the Department of the Interior regrets the failure to discuss the change under the Supplementary Information section of the proposed rulemaking. It was an oversight. However, since the change was made in the body of the proposed rulemaking and did receive comments, it will be explained here as will changes made by the final rulemaking based on

the comments. In the proposed rulemaking the purpose of changing the phrase "livestock forage" to "forage for livestock" was to correct a misnomer. Forage is food for all grazing animals using the land, not just livestock. However, as used in these rulemakings it indicates that a determination has been made that additional forage is available, with some of it available for livestock. To utilize this additional forage for livestock grazing, the BLM accepts applications from grazing permittees who are qualified to use the forage for their livestock. This may result in competing applications. In that case the authorized officer must then determine how much forage to "authorize" to either one or all of the permittees. The word "authorize" is used instead of "allocate" or "apportion" because the latter are used for providing for or allocating forage to all grazing animals during the land use planning process. Paragraph (a) was revised by the proposed rulemaking because the section and paragraph citation in the 1984 regulations were incorrect. Instead of § 4130.2(1)(d), which doesn't exist, the citation should have been § 4130.2(d), which provides for permittees or lessees holding expiring grazing permits or leases to be given first priority for new permits or leases.

Section 4130.6 Terms and conditions.

Only a few comments were received on this section. They recommended that the phrase "control identified in land use plans" in the 1984 regulations be retained. After consideration of these comments, it was decided that the final rulemaking would retain the word "administration" used in the proposed rulemaking, because BLM also administers grazing on lands for which it does not have complete management responsibility, i.e., national recreation areas, national parks, and national wildlife refuges. The word "administration" is needed to give the flexibility necessary to manage the grazing program on these other lands.

Section 4130.6–1 Mandatory terms and conditions.

Numerous comments were received on this section, most of them opposing the proposed rulemaking for the same reasons as discussed previously in §§ 4100.0–5 and 4110.3 regarding the phrases "livestock grazing capacity" and "undue and unnecessary degradation." After consideration of the comments, it has been decided that the final rulemaking will adopt the phrase "livestock carrying capacity" as used and defined by the Society for Range Management, and delete the reference to "undue and unnecessary degradation" for the reasons discussed previously with reference to section 4110.3. The final rulemaking will indicate that the authorized livestock grazing use shall not exceed the livestock carrying capacity as determined through monitoring and adjusted as necessary under §§ 4110.3, 4110.3–1 and 4110.3–2 of this Title.

A few commenters were concerned about the removal of §§ 4120.2–1(c) and 4130.2(d)(3) of the grazing regulations as they existed prior to the effective date of the final rulemaking of March 22, 1984. Section 4120.2–1(c) provided that "all permits and leases shall be made subject to cancellation, suspension, or modification, as required by land use plans, and subject to applicable law. Section 4130.2(d)(3) provided that "Grazing permits or leases shall be modified, suspended, or canceled as required by land use planning decisions." The commenters expressed concerns that by removing these sections Interior intended to eliminate authority to cancel or suspend permits when required by land use planning, and intended to make consistency between land use plans and grazing permits discretionary rather than mandatory. The Interior Department does not, by removing these sections, intend to undermine consistency between land use planning and livestock grazing programs and activities.

It is not always necessary, however, to cancel, suspend or modify a permit or lease to achieve land use plan objectives. In actual practice, changes in grazing management practices and actions such as land treatments, water developments, fencing or other practices may achieve land use plan objectives without requiring a change in the status of the grazing preference or in terms and conditions of the permit or lease. The authorized officer retains authority under § 4130.6–1(b) to cancel, suspend or modify a grazing permit or lease where such action is needed to achieve land use plan objectives. Moreover, § 4100.0–8 of this final rulemaking provides that grazing program activities and management actions approved by the authorized officer "shall be in conformance with the land use plan." These provisions, taken together, effectively require consistency between the land use plan and the grazing activities. Accordingly, §§ 4120.2–1(c) and 4130.2(d)(3) continue to be deleted from the grazing regulations.

Section 4130.7–1 Payment of fees.

Many comments were received regarding the payment of fees. They suggested that the wording in paragraph (e) be changed to read "failure to pay the grazing bill within 30 days of the receipt of the bill or date of turnout, whichever is latest, shall result in a late fee assessment of $25 or 10% of the bill, whichever is greater. Failure to make payment within 30 days may result in action by the authorized officer under § 4160.1–2". Several other commenters suggested that $25 or 10% of the bill is not enough penalty for late payment, while others believed that the trespass/late fee provisions of the existing regulations are sufficient to deter the late payment of grazing fees.

This section was designed to reaffirm the longstanding policy of the BLM, and provisions in section 315(b) of the Taylor Grazing Act, which require the grazing bill be paid upon issuance, even under actual use procedures. The payment of grazing fees at the opening of the grazing season or period, unless otherwise provided for, is due on or before the due date specified in the grazing bill. The user owes the United States for the privilege of using the forage which is apportioned to the user by the date specified in the permit/lease. This payment authorizes forage to be used only by a particular user, and is obligated to that use unless changed either on the application of the permittee/lessee, or by the authorized officer for emergency conditions. Therefore, the final rulemaking will specify in paragraph (d) that the payment is due on the due date specified in the grazing bill. Further, the reference to cooperative management agreements in paragraph (d) is removed because of the removal of provisions pertaining to cooperative management agreements from § 4120.1 of the final rulemaking.

The new paragraph (e) added by the proposed rulemaking has been adopted by the final rulemaking, with some modification as suggested by the comments. The new paragraph (e) will provide that if payment is not made within 15 days of the due date specified in the bill, the late fee assessment will be $25 or 10% of the grazing bill, which ever is greater, not to exceed $250. Payments made more than 15 days after the due date shall include the appropriate late fee assessment. Both the grazing fee and the late fee assessment must be paid within 30 days from the due date shown on the original bill. Failure to do so may be a violation of § 4140.1(b)(1), and result in action by the authorized officer under § 4150.1 and 4160.1–2. These provisions are in accordance with financial management procedures of the Federal Government.

The late fee is a penalty based on administrative costs of auditing the late payment by grazing operators, notifying the operator that payment is late and tracking the progress of late payments. This procedure is designed to be an incentive to livestock operators to make payment of their grazing bill when due. It further provides for a penalty that is less cumbersome to administer than the present Bureau procedure of canceling the grazing bill and initiating unauthorized livestock use actions. This procedure will accommodate extenuating circumstances associated with turn-out dates, climate changes, and personal problems inherent in the livestock industry. Program reviews by the General Accounting Office and Office of Inspector General in 1986 indicated a need to strengthen the provisions for late payments.

Section 4140.1 Acts prohibited on public lands.

Several comments were received concerning acts prohibited on public lands under paragraph (a)(3) regarding supplemental feeding. Most of the commenters objected to any supplemental feeding on the public lands because they felt it would provide for the continued presence of livestock on ranges where the vegetation was already overutilized. A few commenters agreed with this viewpoint, but did feel it might be necessary in emergencies. Another commenter expressed concern over the requirement for approval prior to supplemental feeding because prior approval is not practical when harsh weather conditions demand immediate feeding. In reviewing all of the comments, it was determined that there is much confusion concerning the term "supplemental feeding", and the difference between "supplemental feeding" and "maintenance feeding." To overcome this confusion, the final rulemaking clarifies these terms in order to provide an understanding that maintenance feeding is not allowed on public lands, and supplemental feeding will only be allowed at the discretion of the authorized officer. The use of rangeland during certain times of the year can result in vitamin, mineral, and protein deficiencies in the grazing animal because the existing forage or plants (forage species) may not provide these elements during the nongrowing season. The rangelands are generally capable of supplying all the fiber and roughage material necessary for a subsistence diet, but some supplement may be needed to help maintain an animal's health just as humans may need mineral supplements and vitamins to maintain their health. Examples of supplements for grazing animals are salt, minerals, vitamins and some forms of protein which are usually provided to them in block or liquid form to correct deficiencies observed in the animal's diet.

In contrast to supplemental feeding, maintenance feeding is supplying feed or additional forage such as hay, grains, and straw to range animals when available forage is too limited to meet their minimum daily requirement. BLM has always considered maintenance feeding damaging to rangelands that results in over-utilization of existing vegetation, soil compaction, and poor use patterns due to concentration of animals in a specific area. BLM has prohibited maintenance feeding and concurs with commenters that this practice should not be allowed on public rangelands except during emergencies. This final rulemaking does not amend the language of the existing regulations.

Paragraphs (b)(7) and (b)(8) of the existing regulations have been deleted from § 4140.1 of the final rulemaking as discussed in the Notice published in the Federal Register on July 20, 1987, (52 FR 27321). These paragraphs provided that permittees who violate laws concerning the management of wild free-roaming horses and burros or who violate other federal or state environmental laws may be subject to civil and criminal penalties under §§ 4170.1 and 4170.2. Many comments were received suggesting these provisions should not be deleted because, ranchers who violate environmental laws should not be allowed to retain their grazing permits/leases. The commenters took the view that BLM must have the authority, and is required by section 302(c) of the Federal Land Policy and Management Act, to revoke grazing privileges for violations of all environmental laws. The commenters further contended that the government agency which regulates use of the public lands should institute such control. They expressed concern that these provisions were deleted, while similar provisions pertaining to penalties for violations under the Bald Eagle Protection Act and the Endangered Species Act are retained at § 4170.1–3. Many other commenters took the position that paragraphs (b)(7) and (b)(8) should be removed because they discriminated against the livestock industry. These commenters contended that, in effect, these provisions single out the grazing permittees/lessees for double penalties in that this group is subject to possible revocation of the grazing permit or lease in addition to the penalties applicable to anyone who violates these environmental laws.

In reviewing the comments, it was noted that some commenters concluded that removing the specific references at paragraphs (b)(7) and (b)(8) to the wild horse and other environmental laws was intended to suggest that public land permittees and lessees are not subject to penalties under the environmental laws This is not the case. Removing these paragraphs was not intended to shield permittees and lessees from penalties under laws other than those specified at § 4170.1–3. Rather, it was determined that it is not necessary to include specific grazing penalties for violations of the Wild Horse and Burro Protection Act and Federal and State environmental laws. Enforcement or penalties against grazing permittees or lessees would be premised on the provisions of those laws just as with any other person who violated them. However, the Bald Eagle Protection Act and the Endangered Species Act have specific provisions concerning violations by grazing permittees and it is therefore appropriate to include a specific reference to those laws in the regulations. The final rulemaking deletes paragraphs (b)(7) and (b)(8) of this section. Section 402(a) of the Federal Land Policy and Management Act provides authority for inclusion in permits and leases of such terms and conditions as the Secretary deems appropriate. Therefore, when conditions warrant protection of the land or resources from livestock grazing, appropriate protection provisions will be included in the terms and conditions of the grazing lease or permit. Violating the special protective terms and conditions of a permit/lease is prohibited by § 4140.1(a)(1) and is subject to penalty under § 4170.1. In addition, interfering with lawful uses or users is prohibited by §4140.1(b)(7) and may result in the civil and criminal penalties under §§ 4170.1 and 4170.2. FLPMA provides flexibility to the authorized officer on a case-by-case basis to include provisions for suspension, revocation or cancellation in grazing or other permits. The Department also concluded that the inclusion of paragraphs (b)(7) and (b)(8) in § 4140.1 is unnecessary because there is statutory authority provided to the Secretary of the Interior, not only in section 402(a) of FLPMA, but also in section 302(c), to include special terms and conditions in permits and leases to provide for the management and protection of any environmental element. Consequently, § 4130.6 can be used as necessary to regulate livestock grazing for protection of any environmental values. These provisions

are fully adequate to protect against or to remedy violations of the wild horse or other environmental laws that would have particular harm in the context of grazing or would undermine range management objectives or the purposes of the various range management statues. To the extent that violations unrelated to grazing or range management occur, these violations should be subject to the penalties provided in the environmental laws and applicable to anyone who violates them. And finally, it should be clearly understood that BLM does not have jurisdiction for the enforcement of State laws.

Section 4150.3 Settlement.

Many commenters on settlement of unauthorized grazing use expressed concern that the proposed penalties were too low, when based on the fee for grazing, and would encourage unauthorized use rather than stop it. Others felt that penalties are too high, especially for nonwillful violations, which they said should be the value of forage consumed based on the grazing fee rate. Still others suggested that the word "shall" should be used in place of the word "may" as proposed. After careful consideration of all comments received, it was determined that the settlement section of the proposed rulemaking should be modified in the final rulemaking to use essentially the same wording used in § 4150.3 of the existing regulations. However, the final rulemaking does remove the "repeated nonwillful" provisions because nonwillful violations are often beyond the control of the livestock operator, and additional penalties would be inappropriate in most cases. If nonwillful unauthorized use is attributable to negligence by the livestock operator, it may be considered willful. The final rulemaking also adopts the word "shall" instead of "may" as suggested by the commenters, and the penalty for nonwillful violations will be the value of the forage consumed as determined by the average monthly rate per AUM for pasturing livestock on privately owned land (excluding irrigated land) for the 11 Western States as published annually by the Department of Agriculture. This change continues the language of the existing regulation. The penalties for willful and repeated willful violations will be two and three times, respectively, the penalty for nonwillful violations.

Section 4170.1–3 Federal or State laws or regulations.

As discussed previously under section § 4140.1 the final rulemaking will remove paragraphs (b)(7) and (b)(8) pertaining to revocation or termination of livestock grazing leases, permits or other agreements for violations of the Wild Free Roaming Horse and Burro Protection Act and Federal and State environmental laws. Section 402(a) of FLPMA provides that permits and leases shall be subject to such terms and conditions as the Secretary deems appropriate. Section 4130.6–2 of the existing regulations currently provides authority for the authorized officer to include whatever terms and conditions are necessary in a permit/lease for achieving management objectives, proper range management, or the orderly administration of the public rangelands. If specific provisions for management are required to protect wild horses and burros or other environmental enhancements, the specific management standards and stipulations can be included as terms and conditions of a permit or lease. Violation of the terms and conditions of a permit or lease is a prohibited act in § 4140.1(a)(1) and is subject to civil penalties under § 4170.1.

Editorial changes have been made as necessary.

The principal authors of this final rulemaking are Wilton A. Peterson and Dee R. Ritchie, Division of Rangeland Resources, Bureau of Land Management, assisted by the staff of the Division of Legislation and Regulatory Management.

Based upon an environmental assessment and a finding of no significant impact, it is hereby determined that this final rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment, and that a detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is not required. The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and will not have a negative effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The provisions of this final rulemaking are applicable to anyone who possesses a grazing permit or lease on the public lands, without regard to the size of the operation.

The information collection requirements contained in this rulemaking have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and have been assigned clearance numbers: Grazing Application 1004–0005, Range Improvement Permit 1004–0019; Exchange-of-Use Agreement 1004–0020; Grazing Preference Statement 1004–0041; Grazing Application-Preference Summary and Transfer 1004–0047; Actual Grazing Use Record 1004–0051; and Cooperative Agreement 1004–0068.

Range Improvement Permit 1004–0019; Exchange-of-Use Agreement 1004–0020; Grazing Preference Statement 1004–0041; Grazing Application-Preference Summary and Transfer 1004–0047; Actual Grazing Use Record 1004–0051; and Cooperative Agreement 1004–0068.

List of Subjects in 43 CFR Part 4100

Administrative practice and procedure, Grazing lands, Livestock, Penalties, Range management.

Under the authority of the Taylor Grazing Act of 1934, as amended (43 U.S.C. 315 *et seq.*), the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1701 *et seq.*), and the Public Rangelands Improvement Act of 1978 (43 U.S.C. 1901 *et seq.*), Part 4100, Group 4100, Subchapter D, Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below:

J. Steven Griles,

Assistant Secretary of the Interior

March 4, 1988.

PART 4100—[AMENDED]

1. The authority citation for Part 4100 is revised to read.

Authority: 43 U.S.C. 315, 315a–315r, 43 U.S.C. 1701 et seq., 43 U.S.C. 1181d, unless otherwise noted.

2. Section 4100.0–5, is amended by removing the definition of "cooperative management agreement" and revising the definitions of "actual use", "land use plan", "monitoring", and "range improvement" to read

§ 4100.0–5 Definitions.

* * * * *

"Actual use report" means a report of the actual livestock grazing use submitted by the permittee or lessee.

* * * * *

"Land use plan" means a resource management plan or management framework plan which is being followed until replaced by a resource management plan. These plans are developed in accordance with the provisions of the Federal Land Policy and Management Act and establishes management direction for resource uses of public lands.

* * * * *

"Monitoring" means the periodic observation and orderly collection of data to evaluate:

(1) Effects of management actions; and

(2) Effectiveness of actions in meeting management objectives.

"Range improvement" means an authorized activity or program on or relating to rangelands which is designed to improve production of forage; change vegetative composition; control patterns of use; provide water; stabilize soil and water conditions; and provide habitat for livestock, wild horses and burros, and wildlife. The term includes, but is not limited to, structures, treatment projects, and use of mechanical means to accomplish the desired results.

* * * * *

3. Section 4100.0–5 is further amended by removing the definition for "livestock grazing capacity,"and adding, in alphabetical order, the following definitions:

"Active use" means the current authorized livestock grazing use.

"Actual use" means where, how many, what kind or class of livestock, and how long livestock graze on an allotment.

"Livestock Carrying Capacity" means the maximum stocking rate possible without inducing damage to vegetation or related resources. It may vary from year to year on the same area due to fluctuating forage production.

"Rangeland studies" means any study methods accepted by the authorized officer for collecting data on actual use, utilization, climatic conditions, other special events, and trend to determine if management objectives are being met.

"Trend" means the direction of change over time, either toward or away from desired management objectives.

"Utilization" means the percentage of forage that has been consumed by livestock during a specified period and the livestock grazing utilization pattern on the allotment.

4. Section 4100.0–8 is added to read as follows:

§ 4100.0–8 Land use plans.

The authorized officer shall manage livestock grazing on public lands under the principle of multiple use and sustained yield, and in accordance with applicable land use plans. Land use plans shall establish allowable resource uses (either singly or in combination), related levels of production or use to be maintained, areas of use, and resource condition goals and objectives to be obtained. The plans also set forth program constraints and general management practices needed to achieve management objectives. Livestock grazing activities and management actions approved by the authorized officer shall be in conformance with the land use plan as defined at 43 CFR 1601.0–5(b).

5. Section 4110.2–1 is amended by adding new paragraphs (d) and (e) to read as follows:

§ 4110.2–1 Base property.

* * * * *

(d) If a permittee or lessee loses ownership or control of all or part of his/her base property, the permit or lease, to the extent it was based upon such lost property, shall terminate immediately without further notice from the authorized officer. However, if, prior to losing ownership or control of the base property, the permittee or lessee requests, in writing, that the permit or lease be extended to the end of the grazing season or grazing year, the termination date may be extended as determined by the authorized officer after consultation with the new owner. When a permit or lease terminates because of a loss of ownership or control of a base property, the grazing preference shall remain with the base property and be available through application and transfer procedures at 43 CFR 4110.2–3, to the new owner or person in control of that base property.

(e) Applicants who own or control base property contiguous to or cornering upon public land outside a grazing district where such public land consists of an isolated or disconnected tract embracing 760 acres or less shall, for a period of 90 days after the tract has been offered for lease, have a preference right to lease the whole tract.

6. Section 4110.2–2 is revised to read as follows:

§ 4110.2–2 Specifying grazing preference.

(a) Grazing preference shall be specified in all grazing permits or grazing leases. It shall include both active use and suspended use. Active use shall be based upon the amount of forage available for livestock grazing established in the land use plan as defined in 43 CFR 1601.0–5(k).

(b) The grazing preference specified shall attach to the base property supporting the grazing permit or grazing lease.

(c) The animal unit months of grazing preference are attached to:

(1) The acreage of land base property on a pro rata basis, or

(2) Water base property on the basis of livestock forage production within the service area of the water.

§ 4110.2–3 [Amended]

7. Section 4110.2–3 is amended by revising paragraph (c) to read:

* * * * *

(c) If a grazing preference is being transferred from one base property to another base property, the transferor shall own or control the base property from which the grazing preference is being transferred and file with the authorized officer a properly completed transfer application for approval. If the applicant leases the base property, no transfer will be allowed without the written consent of the owner(s), and any person or entity holding an encumbrance of the base property from which the transfer is to be made. Such consent will not be required where the applicant for such transfer is a lessee without whose livestock operations the grazing preference would not have been established.

* * * * *

8. Section 4110.2–3 is further amended in the first sentence of paragraph (e) by changing the word "deposition" to "disposition."

9. Section 4110.2–4 is added to read as follows:

§ 4110.2–4 Allotments.

After consultation, cooperation, and coordination with permittees or lessees, the authorized officer may designate and adjust allotment boundaries.

10. In § 4110.3 the section heading is revised and text is added to read as follows:

§ 4110.3 Changes in grazing preference status.

The authorized officer shall periodically review the grazing preference specified in a grazing permit or grazing lease and may make changes in the grazing preference status. These changes shall be supported by monitoring, as evidenced by rangeland studies conducted over time, unless the change is either specified in an applicable land use plan or necessary to manage, maintain or improve rangeland productivity.

11. Section 4110.3–1 is revised to read as follows:

§ 4110.3–1 Increasing active use.

Additional forage may be apportioned to qualified applicants for livestock grazing use consistent with multiple-use management objectives.

(a) Additional forage temporarily available for livestock grazing use, including forage which is temporarily available within an allotment because of a change in grazing use under § 4130.1–1, may be apportioned on a nonrenewable basis.

(b) Additional forage available on a sustained yield basis for livestock grazing use shall first be apportioned in

satisfaction of grazing preferences to the permittee(s) or lessee(s) authorized to graze in the allotment in which the forage is available.

(c) After consultation, cooperation, and coordination, additional forage on a sustained yield basis available for livestock grazing use over and above the preference(s) of the permittee(s) or lessee(s) in an allotment may be apportioned in the following priority to:

(1) Permittee(s) or lessee(s) in proportion to the contribution or efforts which resulted in increased forage production;

(2) Permittee(s) or lessee(s) in proportion to the amount of their grazing preference; and/or

(3) Other qualified applicants under § 4130.1–2 of this title.

12. Section 4110.3–2 is revised to read as follows:

§ 4110.3–2 Decreasing active use.

(a) Active use may be suspended in whole or in part on a temporary basis due to drought, fire, or other natural causes, or to facilitate installation, maintenance, or modification of range improvements.

(b) When monitoring shows active use is causing an unacceptable level or pattern of utilization or exceeds the livestock carrying capacity as determined through monitoring, the authorized officer shall reduce active use if necessary to maintain or improve rangeland productivity, unless the authorized officer determines a change in management practices would achieve the management objectives.

(c) Where active use is reduced it shall be held in suspension or in nonuse for conservation/protection purposes, until the authorized officer determines that active use may resume.

13. Section 4110.3–3(a) is revised to read as follows:

§ 4110.3–3 Implementing changes in active use.

(a) Changes in active use in excess of 10 percent shall be implemented over a 5-year period, unless after consultation with the affected permittees or lessees and other affected interests, an agreement is reached to implement the increase or decrease in less than 5 years.

* * * * *

14. Section 4110.4–1 is revised to read as follows:

§ 4110.4–1 Additional land acreage.

When lands outside designated allotments become available for livestock grazing under the administration of the Bureau of Land Management, the forage available for livestock shall be made available to qualified applicants at the discretion of the authorized officer. Grazing use shall be apportioned under § 4130.1–2 of this title.

15. Section 4120.1 is removed and reserved.

§ 4120.1 [Reserved]

§ 4120.2 [Amended]

16. Section 4120.2, as amended on February 21, 1984 (49 FR 6453), which was enjoined as stated in a notice published December 18, 1985 (50 FR 51522), and which appears in the 1986 edition of the Code of Federal Regulations, is removed.

17. Sections 4120.2–1(c) and 4130.2(d)(3) are removed in their entirety. These sections had read as follows:

§ 4120.2–1 Mandatory terms and conditions.

* * * * *

(c) All permits and leases shall be made subject to cancellation, suspension, or modification, as required by land use plans, and subject to applicable law.

* * * * *

§ 4130.2 Grazing permits or leases.

* * * * *

(d) * * *

(3) Grazing permits or leases shall be modified, suspended, or canceled as required by land use planning decisions.

18. A new § 4120.2 is added to read:

§4120.2–3 Allotment management plans.

When allotment management plans are developed, the following provisions apply:

(a) An allotment management plan shall be prepared in careful and considered consultation, cooperation, and coordination with affected permittee(s) or lessee(s), landowners involved, the district grazing advisory boards where established, any State having lands within the area to be covered by such an allotment management plan, and other affected interests. The allotment management plan shall include terms and conditions under §§ 4130.6, 4130.6–1, 4130.6–2 and 4130.6–3 of this title, and shall prescribe the livestock grazing practices necessary to meet specific multiple-use management objectives. The plan shall specify the limits of flexibility within which the permittee or lessee may adjust operations without prior approval of the authorized officer. The plan shall provide for monitoring to evaluate the effectiveness of management actions in achieving the specific multiple-use management objectives of the plan.

(b) Private and State lands shall be included in allotment management plans with the consent or at the request of the parties who own or control those lands.

(c) Completed allotment management plans shall be incorporated into the terms and conditions of the affected grazing permits and leases.

19. Section 4120.3–5 is revised to read as follows:

§ 4120.3–5 Assignment of range improvements.

The authorized officer shall not approve the transfer of a grazing preference under § 4110.2–3 of this title or approve use by the transferee of existing range improvements, unless the transferee has agreed to compensate the transferor for his/her interest in the authorized improvements within the allotment as of the date of the transfer.

20. Section 4130.1–2 introducing text is amended by removing from where it appears in the first sentence the phrase "livestock forage" and replacing it with "forage for livestock", by removing from where it appears in the first sentence the work "allocate" and replacing it with "authorize," and by revising paragraph (a) to read as follows:

§ 4130.1–2 Conflicting applications.

* * * * *

(a) Historical use of the public lands (see § 4130.2(d)).

* * * * *

§ 4130.4–1 [Amended]

21. Section 4130.4–1, paragraph (b) is amended by removing from where it appears in the fourth line of the first sentence the work "grazing" and replacing it with the word "carrying"

§ 4130.6 [Amended]

22. Section 4130.6 is amended by removing from where it appears the phrase "control identified in land use plans" and replacing it with the word "administration."

§ 4130.6–1 [Amended]

23. Section 4130.6-1(a) is amended by removing from where it appears in the second sentence the phrase "grazing capacity and may be limited or excluded to the extent necessary to achieve the objectives established for the allotment." and replacing it with the phrase "carrying capacity as determined through monitoring and adjusted as necessary under §§ 4110.3, 4110.3–1 and 4110.3–2.

24. Section 4130.6–3, as added on February 21, 1984 (49 FR 6453), which was enjoined as stated in a notice published December 18, 1985 (50 FR 51522), and which appears in the 1986

edition of the Code of Federal Regulations, is retained.

§ 4130.7-1 [Amended]

25. Section 4130.7–1, paragraph (d) is amended by removing from where it appears in the first and second sentences the phrases "upon issuance of billings. When billings are issued prior to the grazing season" and replacing it with the words "on the due date specified on the grazing fee bill. Payment", and by removing from where it appears in the third sentence the phrase "or cooperative management agreements".

26. In § 4130.7–1, paragraph (e) is added to read as follows:

§ 4130.7-1 Payment of fees.

* * * * *

(c) Failure to pay the grazing bill within 15 days of the due date specified in the bill shall result in a late fee assessment of $25.00 or 10 percent of the grazing bill, whichever is greater, but not to exceed $250.00. Payment made later than 15 days after the due date, shall include the appropriate late fee assessment. Failure to make payment within this 30 days may be a violation of § 4140.1(b)(1) and shall result in action by the authorized officer under §§ 4150.1 and 4160.1–2.

27. Section 4140.1 is amended by removing paragraphs (b)(7) and (b)(8), which had read as set forth below, and by revising paragraph (a)(3) to read:

§ 4140.1 [Amended]

(a) * * *

(3) Placing supplemental feed on these lands without authorization.

(b) * * *

(7) Violating any provision of Part 4700 of this subchapter concerning the protection and management of wild free-roaming horses and burros;

(8) Violating any Federal or State laws or regulations concerning conservation or protection of natural resources and cultural resources or the environment including, but not limited to, those relating to air and water quality, protection of fish and wildlife, plants, and the use of chemical toxicants;

28. Section 4150.3 is amended by revising the introductory paragraph and paragraphs (a), (b), and (c) to read as follows:

§ 4150.3 Settlement.

The authorized officer shall determine whether the violation is nonwillful, willful, or repeated willful. Where violations are repeated willful, the authorized officer shall take action under § 4170.1–1(b) of this title. The amount due for all settlements shall include the value of forage consumed as determined by paragraphs (a), (b), or (c) of this section. Settlement for willful and repeated willful violations shall also include the full value for all damages to the public lands and other property of the United States; and all reasonable expenses incurred by the United States in detecting, investigating, resolving violations, and livestock impoundment costs.

(a) For nonwillful violation: The value of forage consumed as determined by the average monthly rate per AUM for pasturing livestock on privately owned land (excluding irrigated land) for the 11 Western States as published annually by the Department of Agriculture.

(b) For willful violations: Twice the value of forage consumed as determined in paragraph (a) of this section.

(c) For repeated willful violations: Three times the value of the forage consumed as determined in paragraph (a) of this section."; and

* * * * *

29. A new § 4170.1–3 is revised to read as follows:

§ 4170.1-3 Bald Eagle Protection Act and Endangered Species Act.

Violation of the Bald Eagle Protection Act or the Endangered Species Act may result in penalty under § 4170.1–1 where:

(a) Public land administered by the Bureau of Land Management is involved or affected;

(b) Such violation is related to grazing use authorized by permit or lease;

(c) The permittee or leessee has been convicted or otherwise found to be in violation of the law or regulations by a court or by final determination of any agency charged with the administration of the law where no further appeals are outstanding.

30. Section 4170.1–4, as added on February 21, 1984 (49 FR 6453), which was enjoined as stated in a notice published December 18, 1985 (50 FR 51522), and which appears in the 1986 edition of the Code of Federal Regulations, is removed.

[FR Doc. 88–6819 Filed 3–28–88; 8:45 am]

BILLING CODE 4310–84–M

#2605

Information Office, Rm. NE-G004, 401 M Street SW., Washington, DC from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

List of Subjects in 40 CFR Part 799

Testing procedures, Environmental protection, Hazardous substances, Chemicals, Chemical export, Recordkeeping and reporting requirements.

Dated: March 16, 1988.

J.A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

Therefore, 40 CFR Part 799 is amended as follows:

PART 799—[AMENDED]

1. The authority citation continues to read as follows:

Authority: 15 U.S.C. 2603, 2611, 2625.

2. Section 799.5000 is amended by revising the table to read as follows:

§ 799.5000 Testing consent orders.

* * * * *

CAS Number	Substance or mixture name	Testing	FR citation
328-84-7	3,4-Dichlorobenzotrifluoride	Environmental effects	June 23, 1987
		Chemical fate	June 23, 1987
1634-04-4	Methyl tert-butyl ether	Health effects	March 31, 1988.

[FR Doc. 88-7063 Filed 3-30-88; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 8370

[AA-340-08-4333-02; Circular No. 2605]

Use Authorization; Amendment to the Appeals Provisions of the Regulations for Special Recreation Permits Other than on Developed Sites

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking amends § 8372.6(b) to clarify that petitions for a stay of decisions relating to the issuance of a permit for a competitive use or event on the public lands shall be filed in the Office of Hearing and Appeals, Department of the Interior.

EFFECTIVE DATE: May 2, 1988.

ADDRESS: Inquiries and suggestions should be sent to: Director (340), Bureau of Land Management, Room 3360, Main Interior Bldg., 1800 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Richard Traylor, (202) 343-9353.

SUPPLEMENTARY INFORMATION: A proposed rulemaking published in the Federal Register on September 16, 1985 (50 FR 37555), would have amended the provisions of § 8372.6(b) of Part 8370 to allow only decisions on competitive events or uses to remain in effect pending appeal unless the Secretary rules otherwise.

The proposed rulemaking also provided that a petition for a stay shall be filed with the Director, Office of Hearings and Appeals. This Office is part of the Office of the Secretary of the Interior.

The proposed rulemaking requested that public comments be submitted by November 15, 1985. During this comment period, 9 comments were received: 3 from offices of the Federal Government, 4 from recreation associations, and 2 from individuals. All of the comments objected to the provision that only decisions relating to competitive events would remain effective pending appeal unless the Secretary ruled otherwise. The comments pointed out that both noncompetitive events and decisions denying permits for management purposes would be equally subject to frivolous appeals, effectively "hamstringing" the management of the public lands with regard to recreation and environmental protection. After consideration of the comments, this provision in the proposed rulemaking has not been adopted and the existing regulations remain in effect. This final rulemaking does, however, clarify that petitions for stay of decisions shall be filed with the Office of Hearings and Appeals.

The principal author of this final rulemaking is Richard Traylor of the Division of Recreation, Cultural and Wilderness Resources, assisted by the staff of the Division of Legislation and Regulatory Management, Bureau of Land Management.

It is hereby determined that this final rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The changes made by this final rulemaking will equally affect all members of the public affected by a decision of the Bureau of Land Management regarding the issuance of special recreation permits other than on developed sites.

There are no additional information collection requirements contained in this final rulemaking that require the approval of the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

List of Subjects in 43 CFR Part 8370

Public land—recreation, Recreation areas, Surety bonds.

Under the authority of 43 U.S.C. 1201, the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*), the Oregon and California Railroad and Coos Bay Wagon Road Grant Land Act (43 U.S.C. 1181a), the Act of September 15, 1960, as amended (16 U.S.C. 670g-n), the Land and Water Conservation Fund Act of 1965, as amended (16 U.S.C. 460/-6a) and the National Trails System Act (16 U.S.C. 1241 *et seq.*), Subpart 8372, Part 8370, Group 8300, Subchapter H, Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below:

PART 8370—[AMENDED]

1. The authority citation for part 8370 is revised to read:

Authority: 16 U.S.C. 460/-6a, 16 U.S.C. 670(g-n), 16 U.S.C. 1271-1287, 6 U.S.C. 1241-1249, 43 U.S.C. 1181(a), 43 U.S.C. 1201, 43 U.S.C. 1701 *et seq.*

2. Section 8372.6(b) is revised to read:

§ 8372.6 Appeals.

* * * * *

(b) All decisions of the authorized officer under this part shall remain effective pending appeal unless the Secretary rules otherwise. Petitions for stay of decisions shall be filed with the Office of Hearings and Appeals, Department of the Interior.

March 22, 1988.

James E. Cason,

Deputy Assistant Secretary of the Interior.

[FR Doc. 88-7097 Filed 3-30-88; 8:45 am]

BILLING CODE 4310-84-M

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 507 and 552

[Acquisition Circ. AC-87-1; Supp. 2]

General Services Administration Acquisition Regulation; Comparison of Retirement Costs Under OMB Circular A-76

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Temporary regulation.

SUMMARY: This supplement to the General Services Administration Acquisition Regulation, Acquisition Circular AC-87-1 extends the expiration date to March 8, 1989. The intended effect is to extend the policies and procedures as established in AC-87-1, which temporarily implemented the Office of Management and Budget (OMB) Transmittal Memorandum No. 4 which revised OMB Circular A-76 procedures for calculation and comparison of retirement costs in GSA pending a revision to the Federal Acquisition Regulation.

DATES: *Effective Date:* March 9, 1988.

Expiration Date: March 8, 1989, unless cancelled earlier or extended.

FOR FURTHER INFORMATION CONTACT: Ms. Marjorie Ashby, Office of GSA Acquisition Policy and Regulations (VP), (202) 523-3822.

SUPPLEMENTARY INFORMATION: The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The exemption applies to this rule. When AC-87-1 was originally issued, the GSA certified that under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) that the document would not have a significant economic effect on a substantial number of small entities. This rule will not have a significant impact because of the limited number of solicitations subject to the requirement (approximately 21 in the next year).

The information collection requirements contained in this rule have been approved by OMB under the Paperwork Reduction Act and assigned OMB Control No. 0348-0036.

List of Subjects in 48 CFR Parts 507 and 552.

Government procedure.

PARTS 507 AND 552—[AMENDED]

1. The authority citation for 48 CFR Parts 507 and 552 continues to read as follows:

Authority: 40 U.S.C. 486(c)

2. 48 CFR Parts 507 and 552 are amended by adding the following supplement to Acquisition Circular AC-87-1:

General Services Administration Acquisition Regulation, Acquisition Circular AC-87-1, Supplement No. 2

March 21, 1988.

To: All GSA contracting activities.

Subject: Comparison of retirement costs under OMB Circular A-76.

1. *Purpose*. This supplement extends the expiration date of General Services Administration Acquisition Regulation Acquisition Circular AC-87-1.

2. *Effective*: March 9, 1988.

3. *Expiration date*: The General Services Administration Aquisition Regulation Acquisition Circular AC-87-1 and this supplement will expire on March 8, 1989, unless cancelled earlier.

Patricia A. Szervo,

Associate Administrator for Acquisition Policy.

[FR Doc. 88-6989 Filed 3-30-88; 8:45 am]

BILLING CODE 6820-61-M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1003 and 1043

[Ex Parte No. MC-5 (Sub-8)]

Property Broker Security for the Protection of the Public

AGENCY: Interstate Commerce Commission.

ACTION: Final rules.

SUMMARY: After a review of the initial comments received in this proceeding and or desire to provide brokers with an alternative to filing a surety bond, Form BMC 84, the Commission is amending 49 CFR 1043.4 to adopt procedures for brokers to file other evidence of security. Because brokers cannot operate without a surety bond on file with the Commission and because many brokers have had serious difficulties obtaining or renewing surety bonds, we adopted the proposed changes as interim rules at 52 FR 27,351 (7-21-87) as corrected at 52 FR 28,476 (7-30-87). The interim rules immediately authorized the filing of a trust fund agreement as an alternative security. Comments were subsequently received and evaluated. Modifications have been made to the interim rules based on these comments. The Commission now adopts final rules which will permit the filing of a $10,000 surety bond or $10,000 trust fund agreement. The interim rules will remain in effect until the effective date of the final rules.

DATES: The rules are effective April 30, 1988.

FOR FURTHER INFORMATION CONTACT:

Sidney L. Strickland, Jr., (202) 275-7614

or

Patricia B. Kuhlmann, (202) 275-7819

[TDD for hearing impaired: (202) 275-1721]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission decision. To purchase a copy of the full decision, write to Dynamic Concepts, Inc., Room 229, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 289-4357/4359 (DC Metropolitan area), (assistance for the hearing impaired is available through TDD services (202) 275-1721 or by pickup from Dynamic Concepts, Inc., in Room 2229 at Commission headquarters).

Energy and Environmental Considerations

This action does not appear to affect significantly either the quality of the human environment or the conservation of energy resources.

Regulatory Flexibility Analysis

The Commission certifies that adoption of these final rules will have a significant impact on a substantial number of small entities. However, we expect the economic impact will be beneficial, since the costs to brokers for complying with our security requirements should not increase while availability of required coverage will increase.

The prescribed trust fund agreement is being submitted to OMB for approval. We will continue to accept agreements which comply with this decision pending OMB approval of our prescribed agreement.

List of Subjects

49 CFR Part 1003

Brokers, Motor carriers, Securities, Surety bonds, Trust fund agreements.

49 CFR Part 1043

Insurance, Motor carriers, Surety bonds, Trust fund agreements.

2606

active duty service, the individual must serve at least 4 continuous years service in the Selected Reserve. The individual must begin service in the Selected Reserve within one year from the date of his or her release from active duty. During this period of service in the Selected Reserve the individual must satisfactorily participate in training as prescribed by the Secretary concerned.

(Authority: 38 U.S.C. 1412; Pub. L. 101-237) (December 18,1989)

[FR Doc. 90-10210 Filed 5-2-90; 8:45 am]
BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3758-5]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Notice of final rulemaking; correction notice.

SUMMARY: This notice corrects a codification error which appeared in a final rulemaking on the approval and promulgation of implementation plans for Indiana. This final rulemaking was published in the April 3, 1984, Federal Register (49 FR 13144).

EFFECTIVE DATE: May 3, 1990.

FOR FURTHER INFORMATION CONTACT: E. Marie Huntoon, Air and Radiation Branch (5AR-26), United States Environmental Protection Agency, Region V, Chicago, Illinois 60604, (312) 886-6034.

SUPPLEMENTARY INFORMATION: In particular, on page 13145 of the April 3, 1984, Federal Register in the first column, in the Identification of Plan section, the added paragraph dealing with Indiana's Fiber Glass Insulation Manufacturing (superfine process) Limitations, was incorrectly numbered as (c)(46).

In codifying this paragraph in the Code of Federal Regulations (CFR) (1984), this portion of the plan was codified as (c)(46), replacing the (c)(46) paragraph (concerning Indiana's Malfunctions Regulations, Indiana Administrative Code (IAC) 325 IAC 1.1-5) which was approved on February 14, 1984, (49 FR 5618).

Today USEPA is correcting this error by resubmitting for publication in the CFR (1990), the codification of the February 14, 1984, notice which was inadvertently replaced. This notice of approval will be added to the CFR as a new paragraph, (c)(83). USEPA is also taking this opportunity to update the codification of the Malfunctions rule from 325 IAC 1.1-5 to Indiana's present codification 326 IAC 1-6. This in no way affects USEPA's approval of the substance of this rule. USEPA is retaining its codification at (c)(46) for its approval of Indiana's Insulation Manufacturing (superfine process) Limitations. USEPA regrets any inconvenience this error has caused.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Incorporation by reference.

Note: Incorporation by reference of the State Implementation Plan for the State of Indiana was approved by the Director of the Federal Register on July 1, 1982.

Dated: April 9, 1990.

Valdas V. Adamkus,

Regional Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS, INDIANA

Title 40 of the Code of Federal Regulations, chapter I, part 52, is amended as follows:

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

2. Section 52.770 is amended by adding new paragraph (c)(83) to read as follows:

§ 52.770 Identification of plan.

* * * * *

(c) * * *

(83) On January 21, 1981, the State submitted its revised Malfunctions Rule 325 IAC 1.1-5. On November 16, 1988, Indiana submitted its recodified regulations. This rule was renumbered 326 IAC 1-6, Malfunctions.

(i) *Incorporation by reference.* (A) Title 326 of the Indiana Administrative Code (IAC), Rule 326 IAC 1-6: Malfunctions as published in the April 1, 1988, Indiana Register (IR) at 11 IR 2380. Filed with the Secretary of State on March 10, 1988.

(ii) *Additional materials.* (A) On July 2, 1982, the State submitted clarifications of its intent for 325 IAC 1.1-5.

* * * * *

[FR Doc. 90-10213 Filed 5-2-90; 8:45 am]
BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3100

[AA-620-00-4111-01; Circular No. 2606]

RIN 1004-AA97

Oil and Gas Leasing; Geothermal Resources Leasing Clarifying Amendments

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule, correction.

SUMMARY: The Bureau of Land Management is correcting a cross-reference error made in the text of the final rule clarifying procedures in the administration of the oil and gas leasing program, published in the Federal Register on May 16, 1988 (53 FR 17359).

FOR FURTHER INFORMATION CONTACT: Lois Mason, (202) 653-2190.

§ 3106-5 [Corrected]

1. The cross-reference in 43 CFR 3106.5 to "§ 3111.2 of this title" is corrected to read "§ 3110.5 of this title".

Dated: December 6, 1989.

David C. O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 90-10218 Filed 05-02-90; 8:45 am]
BILLING CODE 4310-84-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 650

[Docket No. 51222-6240]

Atlantic Sea Scallop Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Temporary adjustment of the meat count standard; extension of effective date.

SUMMARY: NMFS issues this notice to extend the duration of the temporary adjustment of the meat count and shell height standards for the Atlantic sea scallop fishery. This action extends to May 11, 1990, the temporary adjustment of the meat count/shell height standard of 33 meats per pound (MPP) (meats per 0.45 kg) and 3 7/16 inch (87 mm) shell height that was to expire on April 30, 1990. This action is taken to allow the New England Fishery Management Council (Council) to discuss the issue at its May meeting.

Federal Register

Monday
May 16, 1988

#9097

SEE CORRECTIONS ON PAGE 31959

Part III

Department of the Interior

Bureau of Land Management

43 CFR Part 3000 et al.

Oil and Gas Leasing, Geothermal Resources Leasing; Final Rulemaking

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3000, 3040, 3100, 3130, 3150, 3160, 3180, 3200, 3210, 3220, 3240, 3250, and 3260

[AA-620-88-4111-01; Circular No. 2606]

Oil and Gas Leasing, Geothermal Resources Leasing

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking makes changes to existing regulations that will clarify procedures in the administration of the oil and gas leasing program on which there have been questions since the publication of the revised regulations for 43 CFR Groups 3000 and 3100 in the **Federal Register** of July 22, 1983. This final rulemaking also makes changes in the regulations in 43 CFR Group 3200.

Proposed changes concerning the noncompetitive and competitive leasing provisions in Subparts 3110, 3111, 3112, and 3120 that were published in the **Federal Register** as proposed rulemaking on June 12, 1987 (52 FR 22592) have been removed in their entirety in this final rulemaking. Those proposed changes were made obsolete by the enactment on December 22, 1987, of the Federal Onshore Oil and Gas Leasing Reform Act of 1987, hereinafter referred to as the Reform Act. A proposed rulemaking published on March 21, 1988, in the **Federal Register** (53 FR 9214) to implement the provisions of the Reform Act contains the revisions proposed to these subparts and changes to other subparts, including Subparts 3102, 3103, 3104, 3106, and 3108. Numerous provisions and references in the June 12, 1987, proposed rulemaking concerning Subpart 3112, or sections therein, have been deleted in this final rulemaking because the specific provisions are no longer pertinent. Changes that are made in this final rulemaking include clarification of the definitions of lessee, operating rights owner (sublessee), and operator and the responsibilities of each concerning lease rights, obligations, and operations on leased lands, including bonding obligations and responsibilities. This final rulemaking also clarifies procedures for approval of lease transfers of record title and operating rights (subleases). It specifies that approval by the Bureau of Land Management is for administrative purposes only and does not warrant that either party to the transfer holds legal or equitable title to the lease. This rulemaking has provisions relating to mass transfers, that is, numerous lease transfers from a single entity to another. In addition, the final rulemaking provides that a request for approval of a voluntary termination of a communitization or unit agreement or the expiration of an agreement without satisfaction of a public interest requirement shall cause the agreement to be invalid from the beginning.

EFFECTIVE DATE: June 15, 1988.

ADDRESS: Inquiries or suggestions should be sent to: Director (500), Bureau of Land Management, Room 5647, Main Interior Bldg., 1800 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Lois Mason, (202) 653-2190, or Robert C. Bruce, (202) 343-8735.

SUPPLEMENTARY INFORMATION: A proposed rulemaking amending the regulations in 43 CFR Groups 3000, 3100, and 3200 was published in the **Federal Register** on June 12, 1987 (52 FR 22592), with a 60-day comment period. During the comment period, comments were received from 35 sources: 14 from business interests, primarily related to the oil industry; 4 from attorneys; 3 from associations; and 14 from Federal agencies. Generally, the comments expressed the view that the changes made by the proposed rulemaking clarify the existing regulations and will be helpful. In addition, there were comments on many of the sections of the proposed rulemaking, some opposing certain provisions and recommending changes. The comments and the action taken on them are discussed in this preamble.

One comment questioned the need for two different authority provisions in each part of the proposed rulemaking. The regulations of the Office of the Federal Register require that an "authority citation" be included at the beginning of each part. The authority section is included in certain parts because it makes the part complete, and in other parts there are special statutory provisions that need to be fully explained in the authority section. Finally, the comment questioned the need to repeat the full text of the authority citation when there is no change in its language. Again, the regulations of the Office of the Federal Register require that the full text of the authority citation be repeated in both the proposed and final rulemaking, even if there is no change in the text of the citation.

43 CFR Part 3000

Section 3000.0-5 Definitions.

Several comments were submitted on the changes made by the proposed rulemaking in the definitions of the terms "party in interest" and "interest." Two of the comments expressed the view that the proposed changes in the definition of these terms caused confusion. The cross-reference to Subpart 3112 in the definition of "party in interest" has been removed and the language in the definition of "interest" in the proposed rulemaking relating to former Subpart 3112 has been removed because that subpart has been removed, the Reform Act having made obsolete the need to delineate differences in the oil and gas leasing methods used by the Department of the Interior. The amended definition of the term "interest" in the final rulemaking addresses only those aspects that do not relate to former Subpart 3112.

In response to several comments on the proposed rulemaking that expressed concern about the expansion of the definition of the term "interest," the final rulemaking has deleted the phrase "fiduciary obligations, security interests." A review of the definition of this term as it appeared in the proposed rulemaking showed that the language of the proposed rulemaking could be interpreted more broadly than was intended. The objective is to identify those holding and controlling interests in oil and gas leases in order to determine whether the acreage limitations and other requirements of the Mineral Leasing Act are being met. It is not the intent to include in the definition of the term "interest" any debt of an entity that may be satisfied by income received from a lease, if that debt does not involve the potential acquisition of the lease by the lender.

One of the comments raised the issue of publicly traded limited partnerships, suggesting that the final rulemaking revise the definition of the term "interest" specifically to exclude unit holders of such partnerships. The final rulemaking has not adopted this suggested change in § 3000.0-5(l), as discussed under section 3102 below.

One of the comments on § 3000.0-5 expressed concern that the changes made by the proposed rulemaking would return the Bureau of Land Management to the earlier requirement that all "parties in interest" be identified in an over-the-counter offer to lease, as well as in all assignments, transfers, and competitive bids. The comment apparently misunderstood the intent on this issue. There is no intention to

expand the information relating to "interest" presently required in a lease offer or an assignment, transfer, or competitive bid. The information is not needed by the Bureau of Land Management unless its examination of the lease instrument or other lease-related document indicates that there may be a problem. At that point, the Bureau can request any information it needs to ascertain the propriety of the lease action. Where necessary for consistency, the final rulemaking has adopted changes in § 3200.0–5, which are discussed above in the comments on "interest."

Section 3000.8 Management of Federal minerals from reserved mineral estates.

Several comments were received on this section of the proposed rulemaking. Generally, those comments questioned why this section was not limited in its application to oil and gas. The reference to groups 3000 and 3100, groups covering oil and gas activities, limits the application of this section to those minerals. Therefore, the final rulemaking has not adopted a specific reference to oil and gas because it is unnecessary, nor has it adopted a specific reference to geothermal resources in § 3200.2.

Section 3100.0–3 Authority.

Several comments on this section of the proposed rulemaking objected to the prohibition of leasing of National Park System lands on the basis that leases on such lands could contain stipulations that would protect the lands and resources. These comments have not been accepted because it is a policy of the Department of the Interior, and in many cases a matter of law, that mineral leasing will not be allowed on National Park System lands unless there is specific statutory authority for such leasing.

Section 3100.0–5 Definitions.

Several comments were received on the definition of the term "operator" as it appeared in the proposed rulemaking. The comments suggested that the definition needed to be clarified to set forth what constitutes an operator. Some of the comments raised questions about the use of the phrase "designated operator" in the definition in the proposed rulemaking and what appears to be an attempt to distinguish between an operator, a designated operator, or an official Designation of Operator filed with the Bureau of Land Management, and their respective responsibilities if they do not hold operating rights or an interest in a lease. The final rulemaking has revised the definition of the term "operator" to mean any person or entity who states in writing to the Bureau of Land Management that it is responsible under the terms and conditions of the lease for conducting operations on a lease or a portion thereof. It eliminates the definition of and all reference to "designated operator." In addition, the final rulemaking adds a definition of the term "operating rights owner" to clarify the use of this term when such rights are transferred by sublease. For consistency, the final rulemaking has included this change in §§ 3160.0–5, 3200.0–5, and 3260.0–5, as well as in numerous sections throughout Parts 3160 and 3260.

Section 3100.4–3 Option statements.

Two comments were received on the changes made to this section by the proposed rulemaking. One comment objected to the removal of paragraphs (a) through (e) because the information specified in those paragraphs is required by the Mineral Leasing Act of 1920 (30 U.S.C. 184(d)(2)). After reviewing the comments, it was agreed that the final rulemaking needed to be changed to retain language clarifying the information that shall be included in an option statement. The final rulemaking has moved one of the requirements of an option statement to § 3100.4–1 and revised § 3100.4–3 by dividing the opening paragraph into 2 parts and adding a new paragraph (b) requiring that the semiannual statement contain the number of acres covered by each option and the total acreage of all options held in each State, in addition to any changes to the option statements submitted in accordance with § 3100.4–1(b).

Section 3101.1–2 Surface use rights.

Numerous comments were received on this section of the proposed rulemaking, which was intended to clarify the authority of the Bureau of Land Management to use the terms and conditions of the standard lease form to control site-specific environmental impacts on leaseholds, as opposed to lease-specific protective measures addressed in lease stipulations to mitigate impacts to specific resource values identified on the leased lands. The standard lease form authorizes the Bureau to require "reasonable measures" to the extent such measures would be consistent with the lease rights granted a lessee. However, certain measures considered reasonable and consistent with lease rights by the Bureau may not be viewed the same way by a lessee. To resolve the uncertainty which has existed concerning the Bureau's authority within the terms and conditions of the standard lease form to control site-specific environmental impacts, the proposed rulemaking was intended to establish the measures over which the Bureau has clear authority.

Many of the comments on this section of the proposed rulemaking expressed concern over the implications of defining the term "reasonable," indicating that lessees would be deprived of the opportunity to challenge the Bureau of Land Management's requirements. Some of the comments expressed the view that the measures being established by the proposed rulemaking were either greater or less than those provided in existing land management plans and currently used to develop lease stipulations. A few comments were of the view that the way the word "reasonable" was used in the proposed rulemaking would limit the Bureau's ability to prescribe adequate mitigation measures at the time lease operations are proposed because, without lease stipulations, it could be inferred that the Bureau's authority under the standard lease form is limited. Other comments expressed the opinion that it would expand the Bureau's authority to control environmental impacts and allow measures to be imposed on leases without adequate justification. One of the comments on this section strongly supported the change made by the proposed rulemaking. After careful review of the comments, the provision in the final rulemaking has been revised. The regulation does not seek to limit the lessee's opportunity to challenge environmental requirements imposed after lease issuance. However, it is appropriate to establish minimum parameters within which the Bureau can specify site-specific mitigating measures which, by regulation, are consistent with the lease rights granted a lessee. The final rulemaking provides that the Bureau, at a minimum, can require relocation of proposed operations by 200 meters and can prohibit new surface disturbance for a period of 60 days, and that such requirements are consistent with the lease rights granted. The authorized officer may grant a lease suspension in appropriate cases if new surface disturbance is prohibited under this section. Similarly, the authority of the Bureau to prescribe "reasonable," but more stringent, protection measures is not affected by the final rulemaking.

Finally, 2 comments on this section of the proposed rulemaking related to measures imposed by the Bureau of Land Management at the time of operations that might be used to expand the protection already specified for a

resource value in a lease stipulation. For example, such measures might result in an unstipulated additional buffer around an area already stipulated to have a buffer or cause a 180-day delay when a delay of only 120 days is specified by a stipulation. This was not the intent of the proposed rulemaking. Measures imposed by this provision of the rulemaking will not be used to increase the level of protection of resource values that are addressed in lease stipulations.

Section 3101.1–3 Stipulations and information notices.

Section 3101.1–3 of the proposed rulemaking was the focus of numerous comments, most of which were directed to the public review requirement for certain lease stipulations. Because new provisions in the Federal Onshore Oil and Gas Leasing Reform Act of 1987 require public notification of lease offerings and substantial modifications of lease terms, that portion of this section of the proposed rulemaking dealing with public review and waiver of stipulations has been removed from this final rulemaking. This matter is addressed in the separate rulemaking that will implement the new law.

Several of the comments on § 3101.1–3 raised questions about the information notices proposed in this section. The comments urged that a lessee be given pertinent information notices prior to the issuance of a lease. The Bureau of Land Management will inform lessees of all requirements related to a lease. The information notice is a method of informing lessees of requirements that may be imposed by an existing law or regulation, not of imposing new requirements. After careful consideration of the concerns expressed in these comments, the final rulemaking has adopted a change that makes it clear that an information notice has no legal consequences except to give notice of existing requirements.

Several of the comments on this section requested clarification of the provision that a lessee be made aware of or required to indicate acceptance of stipulations. As a result of the comments, the final rulemaking has been amended to state that the filing of a bid constitutes acceptance of the stipulations that are set out at the time the lands are made available for lease under Subpart 3120.

Section 3101.2–3 Excepted acreage.

All comments on this section of the proposed rulemaking supported the change made by the proposed rulemaking clarifying the exclusion from chargeable acreage of offers to lease, overriding royalties, and payments out of production. The final rulemaking has adopted the language of the proposed rulemakings without change.

Section 3102.2 Aliens.

Several comments were offered on this section of the proposed rulemaking. Two comments supported the clarification made by the proposed rulemaking. A third comment strongly opposed the clarification made by the proposed rulemaking of the provision that, in accordance with the Mineral Leasing Act (30 U.S.C. 181), would prohibit aliens from holding, owning, or controlling interests in Federal oil and gas leases through units in a publicly traded limited partnership. The comment expressed the view that the Mineral Leasing Act of 1920 did not prohibit such ownership as long as citizens of countries or foreign entities recognized by the United States are granted reciprocal rights. The comment includes a detailed explanation of its position on this issue. After reviewing the arguments presented in the comment, the final rulemaking has not adopted the suggested change. Section 1 of the Mineral Leasing Act (30 U.S.C. 181) authorizes issuance of leases to "citizens of the United States, associations of such citizens, or to any corporation organized under the laws of the United States." A master limited partnership is an association, and therefore, all of the members in such a publicly traded entity must be citizens of the United States to hold an interest in a Federal oil and gas lease. When the Congress enacted the Act in 1920, the States had laws recognizing corporations and limited partnerships. The Congress, while clearly providing for foreign ownership of stock in domestic corporations, did not provide similar authority for foreign participation in limited partnerships. Limited partnerships and corporate entities are organized under completely different laws and principles. The fact that the Act does not reflect recent investment practices does not provide a basis for an interpretation of the Act that would accord a master limited partnership the same status as a corporation. Therefore, the final rulemaking has adopted this section of the proposed rulemaking without change.

Section 3102.4 Signature.

A number of comments were offered on this section of the proposed rulemaking. Several of them recommended that the final rulemaking simplify the language in paragraph (c) of the section to indicate clearly that a request for approval of a transfer be signed by the transferee and that only one original of such request be required, even though the Mineral Leasing Act of 1920 (30 U.S.C. 187a), requires that 3 copies of the transfer be originally signed and dated by the transferor. One of the comments on this section of the proposed rulemaking pointed out that the request for approval of an assignment does not inure to the benefit of the transferor; rather it is merely the transferee's representation to the Bureau of Land Management that he/she is qualified to hold the interest in the lease that is being transferred. After a thorough review of the comments, the final rulemaking has adopted a change that combines paragraphs (b) and (c) into a single paragraph and revises the provision for clarity.

A final comment on this section of the proposed rulemaking supported the change made by paragraph (e), redesignated paragraph (d) by the final rulemaking, that would not allow reference to a qualification file number. This would eliminate the possibility of referring to a noncurrent qualification statement when the Bureau of Land Management requests information concerning a lessee's qualifications.

Section 3102.5–1 Compliance.

Several comments were received on this section of the proposed rulemaking, with most of those comments pointing out typographical errors, the need to clarify cross-references to other sections of the rulemaking, and other technical problems. The final rulemaking has made these changes. One of the comments suggested that excluding lease assignments or tranfers from compliance with the provisions of section 2(a)(2)(A) of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 201(a)(2)(A)) is illogical and the position of the Department of the Interior should be reassessed. The Department's Solicitor has considered this question and concluded that section 2(a)(2)(A) prohibits the Secretary of the Interior from issuing leases covered by the requirements of the section, but does not prohibit the approval of an assignment or transfer of a lease to any entity that the section disqualifies from receiving a newly issued lease. (Solicitor's Opinion M–36951, 92 I.D. 537, 556 (1985).) This interpretation allows an entity that is disqualified from receiving a newly issued lease to acquire leases through approval of an assignment or transfer. The final rulemaking, therefore, has not changed this provision.

Section 3102.5–2 Certification of compliance.

Several comments on this section indicated that there was a need to clarify that a separate statement of certifications of compliance is not required when forms approved by the Bureau of Land Management are submitted for leasing actions because the certification is a part of the approved form. After careful review of this issue, the final rulemaking has adopted clarifying language by moving the first sentence of § 3102.5–3 of the proposed rulemaking to the end of this section. In response to a comment, the final rulemaking has adopted an amendment to this sentence to include a reference to the execution of a document as a necessary requirement for certification of compliance.

One of the comments on this section of the proposed rulemaking raised questions concerning the requirement for certification for entities which have constituent members holding, owning, or controlling more than 10 percent of the entity. The final rulemaking has adopted the language of the proposed rulemaking without change. It is the policy of the Department of the Interior to allow corporate entities, as well as publicly traded associations, including publicly traded partnerships, to qualify for Federal oil and gas leases by certifying only as to the citizenship of persons holding or controlling more than 10 percent of the outstanding shares of the entity holding or controlling a Federal oil and gas lease. Such certification is made through execution and submission of Bureau-approved forms. Separate certification of citizenship of such entities and associations is not required by the Bureau.

Section 3102.5–3 Evidence of compliance.

Several comments were received on this section of the proposed rulemaking. Some of the comments concerned the provision requiring the authorized officer to cancel or reject a potential lease action, such as issuance of a lease or approval of a lease transfer, if the information requested is not provided. The comments argued that this penalty was excessive. In recognition of the points raised in the comments, in the final rulemaking the last sentence of this section has been revised to specify that failure to submit the requested information shall result in adjudication of the action based on the incomplete submission. A request by the Bureau of Land Management for additional information will be made to clarify questions concerning a potential lease action. The failure to comply with such a request for information could result in the denial of lease approval or disapproval of the lease action.

One comment expressed the view that the title of this section of the proposed rulemaking needed to be clarified. The final rulemaking has adopted a change to the title of the section, so that it now more accurately describes the purpose of the section.

Section 3103.1–2 Where submitted.

Two comments were received on this section of the proposed rulemaking which sets out the address where annual rental payments are to be sent. One of the comments expressed the view that the final rulemaking needed to clarify paragraph (a)(2) of the section to exclude from its applicability those leases covered by paragraph (b). The final rulemaking adopts the changes suggested by this comment. One comment expressed the view that providing the address of the Minerals Management Service was helpful.

Sections 3103.2–1 and 3103.2–2 Rental requirements and annual rental payments.

One comment was submitted on these two sections of the proposed rulemaking. It expressed the view that the titles improperly differentiated between the advance and annual rental requirements. The comment pointed out that it is common industry understanding that "advance rental" means a year's rental that is paid in advance, i.e., at the beginning of each lease year. In recognition of the use of this term by the industry, the final rulemaking has adopted a change that eliminates the word "advance" from the title of § 3103.2–1. The final rulemaking has not adopted the recommended change in the title of § 3103.2–2 because the title as written properly identifies the content of the section.

Several comments were received on the introductory paragraph of § 3103.2–2 concerning the acceptability of an annual rental payment, required to be made on a day when the Minerals Management Service is closed, that is postmarked on the next day that the designated Minerals Management Service office is open. One of the comments indicated that this change would prevent the inadvertent cancellation of some leases due to confusion between the anniversary date and the date when the rental was actually received, with the date of receipt being controlling when the Service office is closed. Another comment on this specific issue agreed with the interpretation given in the preamble to the proposed rulemaking. Most of the comments on this section strongly opposed the provision contending that it was contrary to the Mineral Leasing Act of 1920 (30 U.S.C. 188(b)) which requires that the rental payment must be made on the anniversary date or, if the office is closed on the anniversary date, the rental must be received on the next day the office is open, but must be made on or before the anniversary date or the lease terminates by operation of law. The final ruelmaking adopts the comments opposed to using the postmark as receipt of payment. The reference to the "postmark" in the proposed rulemaking, as well as the postmark provision that is included in the existing regulations is removed. Accordingly, if the annual rental payment is not received on time in the proper office of the Minerals Management Service, the lease shall terminate automatically by operation of law. However, the final rulemaking includes in § 3108.2–1(a) an additional provision explaining what constitutes reasonable diligence, allowing a lessee to obtain a Class I reinstatement, when the rental is not received on time, under the following circumstances: (1) The rental payment is postmarked on or before the anniversary date; or (2) if the Service office is closed on the anniversary date, the rental payment is postmarked on or before the next day the Service is open to the public. All other requirements of a Class I reinstatement, including receipt of the payment within 20 days of the due date must be met. This change also affects §§ 3108.2–1 and 3108.2–2, and changes to those sections are addressed at the proper point in this preamble.

The preamble to the proposed rulemaking requested the public to comment on a possible change in the rental schedule. Twelve comments were submitted on this subject, with the majority of them being opposed to any rental increase. However, the Reform Act changed the rental rates required for competitive and noncompetitive oil and gas leases. Accordingly, provisions in § 3103.2–2 concerning rental rates are not included in this final rulemaking, but instead are addressed in the separate rulemaking implementing the new law.

Section 3103.3 Royalties.

The proposed rulemaking requested the public to comment on the current competitive lease variable royalty rate schedules, as well as the variable royalty rate schedule attached to 20-year leases at the time they are renewed or exchanged, in terms of efficient

production practice, maximizing resource recovery, collection of maximum royalties, and the administrative burden associated with the schedules contained in the existing regulations. Thirteen comments were submitted in response to the questions raised in the proposed rulemaking.

The majority of the comments indicated that a variable royalty rate may not directly affect the ultimate production from the lease but may influence the decision to drill a well on a lease. From a reservoir management standpoint, factors such as reservoir characteristics and marketing conditions may have a greater influence. Some of the comments, however, were of the view that the current royalty schedules result in incremental distortions of production from some wells. The comments did not agree on what a new variable rate schedule should be and indicated that a flat rate would be preferable and might increase ultimate production. On the issue of the administrative burden of the current variable royalty rate schedules and whether they could be audited, the comments expressed the view that variable royalty rates complicate the auditing of lease production and add to the administrative burden. Finally, the majority of the comments suggested that successive incremental rates, if continued, be applicable to successive production increments.

Because of the enactment of the Reform Act, the provisions for royalty rates are not addressed further in this final rulemaking. A separate rulemaking to implement the new law addresses the royalty rates provided in §§ 3103.3–1 and 3103.3–2 for the competitive and noncompetitive leasing program in accordance with the new law.

Section 3103.3–3 Limitation of overriding royalties, payments out of production and similar interests and arrangements.

This section of the proposed rulemaking generated a number of comments, with several expressing considerable concern over the inclusion of carried interests and net profit interests because of the difficulty of calculating such interests on a percentage basis. The other comments on this section recommended that the final rulemaking delete the entire section because such overriding royalty interests and other similar agreements are voluntarily entered into by the lessee with other parties. The United States is not required to approve these agreements and, thus, should not become involved, except when a reduction in the Federal rental or royalty rate is requested by the lessee, in which case the effect of outstanding private payments will be considered. Accordingly, at the time of such a request, the authorized officer could require that any excess overriding royalty or similar interest be reduced before consideration will be given to the requested reduction in Federal rental or royalty. Two other comments on this section of the proposed rulemaking pointed out a discrepancy in the next-to-last sentence of the section and the language of § 3103.4–1(c) of the proposed rulemaking. The discrepancy is caused by a difference in the extent of possible reduction of the other interests and the comments recommended that the language of § 3103.4–1 be adopted by the final rulemaking. In response to the comments, § 3103.3–3 has been deleted in its entirety from the final rulemaking.

Section 3103.4–1 Waiver, suspension or reduction of rental, royalty or minimum royalty.

This section of the proposed rulemaking attracted several comments, with one of the comments commending elimination of the requirement that requests be filed in triplicate. All of the comments noted the addition of carried interests and net profit interests or similar arrangements and recommended that these interests be removed by the final rulemaking. The final rulemaking has adopted the recommendations of the comments and removed all reference to these types of interests.

Section 3103.4–2 Suspension of operations and/or production.

Several comments were received on this section of the proposed rulemaking. One of the comments commended the elimination of the requirement to file requests in triplicate. One comment requested that the final rulemaking clarify paragraph (f) concerning the applicability of a suspension of obligations on a Federal lease subject to a unit or cooperative plan with no application of such a suspension to non-Federal leases within a unit. The final rulemaking has adopted this suggestion because the regulations in 43 CFR Group 3100 are applicable only to Federal interests. The non-Federal lands within a unit are governed by the terms of the lease or contract between the non-Federal lessor and its lessee, as well as any requirements of the State where the unit is located.

Most of the comments supported the addition of the *force majeure* provision, with one of the comments recommending that the final rulemaking expand the provision to include lack of market for new production to handle the recent market volatility, while another comment suggested that the language describing this provision is the preamble of the proposed rulemaking be added to this section. *Force majeure* generally includes such events as strikes, acts of God, and unforeseeable administrative delay, but not lack of a market by itself. No changes have been made in the final rulemaking, in order to avoid limiting the discretion of the authorized officer to address unique situations that may occur in lease operations.

A comment on paragraph (d) of this section suggested that the language be clarified to ensure that the requirement for resumption of rental payments on the first day of the month in which a suspension is lifted will not expose a lessee to termination of the lease. The final rulemaking has not adopted a change in this section of the proposed rulemaking. At the time a suspension of operations and production is approved, the advance rental will have already been paid for the full lease year and will continue to be credited for the remainder of a lease year when the suspension is lifted, normally allowing sufficient time for the rental to be paid in advance of the next lease year.

Two comments suggested that the final rulemaking clarify the difference between the three types of suspension that can be approved and suggested that there should be a cross-reference to § 3165.1. In response to these comments, the final rulemaking has adopted a change to clarify the different types of suspension, as well as to include in paragraph (c) a cross-reference to § 3165.1. In addition, the final rulemaking has adopted a clarification as part of paragraph (d) which specifies that a suspension of operations only or suspension of production only does not suspend requirements for payment of rentals and royalties, including minimum royalties.

Section 3104.1 Bond obligations.

As part of the change in the definition of the term "operator" in § 3100.0–5 of the proposed rulemaking to remove all reference to designated operator, the final rulemaking also amends this section of the proposed rulemaking to remove all reference to designated operator, making this section consistent with § 3100.0–5. This change also is being made in the final rulemaking to §§ 3206.1–1, 3206.3–1, 3206.5, and 3206.6 for consistency.

Section 3104.6 Where filed and number of copies.

One comment on this section of the proposed rulemaking suggested that the

reference to § 3104.3 should be changed to § 3104.3(a) to clarify that only statewide bonds or riders, rather than nationwide bonds, are required to be filed in the State office having jurisdiction of the lease, because the next sentence also provides that nationwide bonds can be filed in any State office. The final rulemaking has adopted this suggestion.

The comments suggested the removal of the requirement in the proposed rulemaking that a replacement bond or rider to a nationwide bond be filed in the same State office where the original bond was filed. After reviewing the comments, the final rulemaking, in response to the comments, has removed this requirement.

Section 3104.7 Default.

This section of the proposed rulemaking received two comments. One recommended that paragraph (b) be amended by the final rulemaking to set a time limit for the posting of a new bond or restoration of an existing bond, or the posting of a separate or substitute bond for each lease covered by the deficient bond. In response to this comment, the final rulemaking has combined paragraphs (b) and (c) of the proposed rulemaking and made it clear that the time limit for restoring a bond to its full value or for posting a new bond shall be within 6 months of notice from the authorized officer.

The comments on this section of the proposed rulemaking raised a concern that an operator who is in default could expose the record title holder of the lease to liability even though the lessee is not in default. After careful review of this issue, the final rulemaking has adopted a change to this section that gives the authorized officer the discretionary authority to cancel a lease, rather than continuing the more restrictive language of the proposed rulemaking. An operator on the ground is in the best position to carry out the terms and conditions of a lease and should be responsible for handling the default. However, if all efforts to resolve the default fail, including attaching the bond, the authorized officer may then take the appropriate steps to cancel the lease. In response to these comments, and for consistency, the final rulemaking has clarified the responsibilities of the lessee, operator, and operating rights owner (sublessee) throughout Parts 3160, 3180, 3260, and 3280.

Section 3105.2–3 Requirements.

Numerous comments discussed this section of the proposed rulemaking. One of those comments suggested that the communitization agreement application be considered only after a well has been completed because the effective date of any agreement is the date of the first sale, and the operator would have no incentive to file the agreement application until a well is completed on the lease because the public interest requirement must be met or approval of the agreement becomes invalid. The final rulemaking has not adopted this suggestion because, under the provisions of the proposed rulemaking, the agreement approval would be valid if the public interest requirement is met, and the lease could receive a drilling extension even though no production was established.

Two comments questioned allowing the filing and approval of a communitization agreement after the lease expires. One suggested that if all the lands in the proposed communitized area are Federal lands and the leases have expired, no purpose would be served by approving an agreement since there is no well and drilling could not occur until the lands are again under lease. One comment expressed the view that approval of an agreement after the lease expires has the effect of breathing life back into a lease so long as the lands have not been posted on a list of lands available for leasing. The comment further suggested that this form of a lease extension is not authorized by the Mineral Leasing Act, and that in most instances an action to communitize lands is required prior to the expiration date of any involved lease. One comment requested that paragraphs (c) and (d) be reorganized. The final rulemaking removes paragraphs (b) and (c) of the proposed rulemaking relating to informal agreements and filing of agreements for consideration after the lease expiration date. The final rulemaking reorganizes the section into three paragraphs and requires filing of an agreement for approval prior to lease expiration, thus eliminating the uncertainty as to whether a lease has expired.

The comments on the public interest requirement of this section recognized the abuses of operators who terminated unit or communitization agreements solely to gain automatic extension of a lease when no attempt had been made to drill under the terms of the agreement. A few of the comments suggested that the public interest requirement be limited to those instances where there has been no drilling under the agreement or that the requirement be satisfied by any reasonably prudent activity conducted in a good faith effort to explore for oil or gas. Two comments expressed the view that the public interest requirement was never intended to apply to existing production of commencement/continuance of diligent operations to unitized or communitized zones. Other comments questioned the use of the public interest requirement to limit lease extensions, with one of the comments contending that the Bureau of Land Management does not have the authority to alter the language of the law addressing drilling and elimination/termination. Two of the comments pointed out the proposed rulemaking removes the discretion of the authorized officer to terminate an agreement under appropriate circumstances and recommended that this authority be restored by the final rulemaking.

The standards for the public interest requirement are similar to those established for actual drilling operations, which require industry to operate in a responsible manner if it is to receive the benefits of the law. The provision of the proposed rulemaking is consistent with the law, which requires approval of the agreement to be in the public interest. The provision would render the approval invalid if the public interest requirement is not satisfied. The model unit agreement provided for in section 3186 of the existing regulations contains a provision in section 9 that allows the flexibility to terminate a unit for good cause and requires establishing to the satisfaction of the authorized officer that further drilling would be unwarranted or impracticable. The final rulemaking adopts the language of the model agreement in redesignated § 3105.2–3(c) as an exception to the requirement to drill the well pursuant to communitization agreements.

Five comments on § 3105.2–3(e) of the proposed rulemaking also addressed the same provisions contained in § 3183.4 of the proposed rulemaking. The comments all expressed concern regarding the effect that invalidation of approval of a unit agreement would have on lease segregations and extensions of the segregated leases. One of the comments suggested that this provision of the proposed rulemaking be amended by the final rulemaking so that it affects only the extension of leases occurring when a unit agreement terminates and the segregation process, together with extensions of the segregated leases, would be unaffected. Another comment suggested that lease segregations and resulting extensions would have to be "undone" if the unit approval is declared invalid. One of the comments questioned the effect of this section of the proposed rulemaking on the segregated lease where drilling may have taken place and production

established during the two-year extension period following segregation. Finally, two of the comments questioned whether, under the rulemaking, when multi-well obligations are included in the agreement, all wells under a unit agreement must be drilled to meet the public interest requirement.

The Bureau of Land Management's administrative action in processing lease segregations and extensions of segregated leases may be deferred until the authorized officer has determined that the public interest requirement has been satisfied and that the unit agreement is valid. Until a determination is made that a unit agreement is valid as approved, thereby allowing the segregation and extension of leases beyond their primary term, development activity (approval of an Application for Permit to Drill) on such lands outside of the unit agreement area also may be deferred. Development activities would be allowed to continue on the portion of a lease outside the unit area during the primary term of the lease and, if production is established prior to the end of its primary term and the unit approval is determined to be invalid, such production holds the entire lease because no segregation has taken place. In the case of multi-well obligations under a unit agreement, completion of one well to the unitized formation may, as determined by the authorized officer at the time of approval, satisfy the public interest requirement. The final rulemaking has adopted the language of § 3105.2–3(e) of the proposed rulemaking redesignated as § 3105.2–3(c), with the addition of language providing for a determination by the authorized officer that further drilling would be unwarranted or impracticable. These comments also were directed to § 3183.4 of the proposed rulemaking and the final rulemaking has adopted the language of that section without change.

Subpart 3106—Transfers by Assignment, Sublease or Otherwise

Subpart 3106 of the proposed rulemaking received several comments. One of the comments recommended that what it called "artifical" distinction between the holder of the record title and holder of the operating rights be eliminated and that a transfer of operating rights be recognized as a transfer of the working interest or the execlusive right to explore for minerals in the lands acquired by the lessee with all of the lessee's rights to and obligations for development of the minerals. This comment also recommended that the Bureau of Land Management reinstitute the policy of adjudicating transfers of operating rights and verify that an applicant for an Application for Permit to Drill is either the holder of the operating rights or his/her designee. The comment expressed the view that this change would ensure that the prospective permittee has a right to operate on the lease.

Another comment suggested that the Department of the Interior's decision to discontinue the close examination of subleases will result in increased potential for surface operations to be carried on by one who is not the lessee and it could foster increased litigation over responsibility for violations of the conditions of permits issued to different parties. The comments contended that holding the record title holder liable is insufficient to prevent environmental degradation by a surface operator.

The final rulemaking has not adopted these general suggestions for changes to Subpart 3106 of the proposed rulemaking. The Bureau of Land Management cannot, and should not, undertake the role of attempting to validate privately arranged agreements between any lessee and its sublessee, or of protecting a lessee's rights under a private arrangement to which the Federal Government is not a party. The Bureau does not have the power or authority to warrant title is such circumstances regardless of whatever administrative examinations may be conducted. The Bureau's policy for over two years has been not to adjudicate transfers of operating rights because it is time-consuming and unnecessary unless there is an independent concern about a transferee's qualifications. The Bureau's experience is that this process is working well. The comment regarding eliminating the distinction between the holder of a record title and the holder of operating rights in an oil and gas lease has not been adopted in the final rulemaking because the transfer of operating rights is a sublease or a private subsidiary arrangement between the lessee of record and the operator. As recognized in the statutory language, such an arrangement is in addition to, rather than in place of, the contractual agreement between the lessee of record and the United States.

One comment received on § 3106.1(a) of the proposed rulemaking concerned the requirement that transfers filed more than 90 days following signature by the transferor must provide a statement that the transfer is still in force.

The comment suggested that, in many cases, this is a paper exercise that serves neither the public nor the Bureau of Land Management, because small delays of a few days beyond this time period result in extensions of compliance time to ascertain whether the transfer remains in force or causes disapproval of the transfer followed by a new transfer. In response to this comment, the final rulemaking includes language to change this provision to allow the authorized officer to verify that the transfer is still in force. When factors such as the receipt of any intervening transfer cause the Bureau to question whether the transfer is still valid, at the discretion of the authorized officer, an inquiry would be made to the parties involved prior to approval or disapproval of the transfer.

Section 3106.1(b) of the proposed rulemaking would be revised in the final rulemaking to remove provisions applicable only to leases under Subpart 3112, now made obsolete by enactment of the Federal Onshore Oil and Gas Leasing Reform Act of 1987.

Several comments were received on § 3106.4–1 of the proposed rulemaking. One of the comments questioned why a $25 filing fee was required to be submitted with each transfer of operating rights when the Bureau of Land Management no longer adjudicates such transfers. The Bureau is authorized by the Federal Land Policy and Management Act of 1976 to recover costs in connection with its administrative activities and to assess charges for benefits granted. The Bureau has determined that the $25 fee is needed to recover its costs for handling transfers to determine compliance with the Mineral Leasing Act. The final rulemaking continues without changing this provision of the proposed rulemaking.

A few comments on this section recommended that the final rulemaking be reworded for clarity. This recommendation has been adopted in the final rulemaking.

Section 3106.4–1 of the proposed rulemaking generated several comments, two of which suggested that documentation of operating rights, in addition to the required transfer from, should be maintained in the case file for the benefit of present or potential lessees or operators who may wish to know more details of the lease interests that have been created in order to make informed decisions on whether or not to acquire a lease interest or to drill on a particular lease. It is not necessary for the Bureau to maintain copies of private agreements between a sublessor and sublessee to approve a transfer of operating rights because most of the information in such documents involves specific terms and agreements between those parties and does not affect the

approval process by the Federal Government. Therefore, the final rulemaking has not adopted this suggested change.

One comment on this section of the proposed rulemaking noted that the rulemaking eliminates the provision in the existing regulations which allows a transferee to make a single request for approval of several transfers filed at the same time. The final rulemaking has adopted the suggested change and restored appropriate language concerning the provision in this section.

Several comments were received on § 3106.4–2 of the proposed rulemaking. Two of the comments suggested that it be made clear that in certain instances a transfer need not be on an officially approved form. This section of the proposed rulemaking included 2 separate paragraphs to distinguish between a transfer in conjunction with a transfer or record title or of operating rights (sublease) and a transfer of interests that is made independent of a transfer of record title or of operating rights (sublease). In the second of these sections are stated the requirements for filing such transfers if the current Bureau form is not used. The final rulemaking adopts this provision of the proposed rulemaking without change. For consistency with the removal in the final rulemaking of § 3103.3–3, the final rulemaking removes from this section the requirement that transfers of overriding royalties and other similar interests contain a statement providing for suspension. The third comment on this section focused on paragraph (b) and suggested eliminating the requirement for an originally executed copy of a transfer in the types of transfers described in this paragraph because the Bureau of Land Management does not approve these kinds of transfers. The final rulemaking has adopted this suggestion and removed the requirement in paragraph (b) for an originally executed copy for this type of transfer when created or reserved in a lease independent of a transfer of record title or of operating rights (sublease).

Section 3106.4–3 of the proposed rulemaking received several comments. Three of the comments expressed strong support for the procedure allowing mass transfers. One comment recommended removal from paragraph (b)(3) of the phrase "and the depths or formations", contending that such information is not needed because the Bureau of Land Management is not adjudicating or abstracting operating rights transfers (subleases). This recommendation has been adopted in the final rulemaking.

One comment was received on § 3106.6–1 of the proposed rulemaking which suggested that the section be amended to provide for those instances when a bond is no longer required. The final rulemaking has adopted the suggested change and also has been revised to adopt the current bond terminology referring to lease bonds, rather than to lessee's general lease or drilling bond and operator's bond. A lease bond may be provided either by a lessee, operating rights owner (sublessee), or operator. For consistency, the final rulemaking has made similar revisions for this terminology in Subparts 3134 and 3206.

The comments on §§ 3106.6–2 and 3106.6–3 of the proposed rulemaking questioned restricting the bond coverage solely to the holder of operating rights and suggested that the sections be amended by the final rulemaking to clarify that the bond may be furnished by any operator. This suggestion has been adopted by the final rulemaking along with a provision that the operator must furnish evidence of the surety's consent under an existing bond to become co-principal. This final rulemaking also redesignates § 3106.6–3 of the proposed rulemaking as § 3106.6–2, and § 3106.6–2 of the proposed rulemaking has been made a part of § 3106.6–1, Lease Bond, in the final rulemaking.

Several comments were directed to § 3106.7–2 of the proposed rulemaking. The comments expressed concern about both the sublessee and the lessee of record having responsibility for all lease obligations. The comments were of the view that the lessee of record should not be fully responsible when it is not the operator on the lease. The final rulemaking has adopted a change which makes the sublessee responsible for all obligations under the rights transferred to the sublessee. This change is consistent with the change made by the final rulemaking in § 3104.7 as discussed earlier in this preamble. This change also is applicable to the bonding and lease transfer provisions in Subpart 3134 and 3135 and the final rulemaking has made the appropriate changes in these subparts. For consistency, the final rulemaking also has made appropriate changes to § 3241.5 and has clarified the responsibilities of the lessee, sublessee, and operator throughout Parts 3160, 3180, 3260 and 3280.

Sections 3106.8–1, 3106.8–2, and 3106.8–3 of the proposed rulemaking generated one comment which raised questions about the requirement for bond coverage under the situation described in these sections because the provisions are not uniform. The final rulemaking makes it clear when a change in bonding coverage may be required.

Section 3107.1 Extension by drilling.

Several comments were made on this section of the proposed rulemaking. All but one of the comments objected to the provision that set forth what constitutes actual drilling operations. One comment suggested that the provision was too narrow, and suggested that the final rulemaking provide that the use of a spudder rig, timely followed by the placement of a rotary rig, which continuously drills to a valid objective would constitute actual drilling operations. Two other comments expressed the view that no purpose is served by the new language in the proposed rulemaking on actual drilling operations, because the current provisions represent a well-established terminology, having been interpreted numerous times by the Department of the Interior Board of Land Appeals, and urged that it be removed in the final rulemaking. Another comment on this point suggested that there is no precedent for the language in the proposed rulemaking requiring penetration of certain horizons and suggested that the model unit agreement allows an operator to cease drilling "at a lesser depth" than that provided in the agreement if unitized substances can be produced in paying quantities. This comment also made the point that there is no requirement that a lessee drill a well on a lease to any particular depth or formation. Another comment objected to any attempt by the proposed rulemaking to impose additional conditions for obtaining an extension of a lease. The comment also stated that the application of unit well standards as a condition for the extension of a lease would result in imposing a burden on an operator who makes a good faith effort to drill, but is unable to drill a well which meets the unit drilling requirements.

The proposed rulemaking did not add any new requirements but incorporated standards established by the Interior Board of Land Appeals as necessary for the Bureau to determine whether a lease is extended. The model unit agreement provides for establishing, to the authorized officer's satisfaction, that further drilling would be unwarranted or impracticable. The same language has been adopted by the final rulemaking for this section as for communitization agreements as discussed under §3105.2–3(e) earlier in this preamble.

Section 3107.3–2 Segregation of leases committed in part.

The final rulemaking makes technical changes in § 3107.3–2 to clarify the period of lease extension for leases segregated in conjunction with a cooperative or unit plan and to specify that no lease operations on the segregated lease will be approved after the primary term of the lease and that no lease extension will be recognized until the public interest requirement for the unit agreement has been satisfied. These changes are added by the final rulemaking to be consistent with the language contained in § 3107.4. Section 9, 18, and 20 of the model unit agreement also have been revised to be consistent with the amendments of §§ 3107.3–2 and 3107.4. These provisions are the correct and consistent interpretation of the Mineral Leasing Act

Section 3107.4 Extension by elimination.

Several of the comments on the public interest requirement contained in the proposed rulemaking also included a discussion of this section. The public interest requirements are discussed in full under § 3105.2–3(e) earlier in this preamble.

Section 3108.1 Relinquishments.

The only comment on this section expressed the view that the provision allowing relinquishment by the record title holder's attorney-in-fact confuses two issues, i.e., who actually relinquishes a lease, and who may execute the relinquishment. The comment stated that the proposed rulemaking could generate unforeseen consequences because the power of attorney may not permit the attorney-in-fact to execute a relinquishment. After careful review of the comment, the final rulemaking has adopted the provision of the proposed rulemaking but has revised the language to refer to a duly authorized agent, the acceptable terminology under general agency law. It is incumbent upon the parties to an attorney-in-fact or agency agreement to ensure its adequacy in actions taken on behalf of the principal.

Sections 3108.2–1 and 3108.2–2 Automatic termination and Reinstatement at existing rental and royalty rates—Class I reinstatements.

These sections of the proposed rulemaking dealt with allowing a rental payment to be considered filed in a timely manner when it is due on a day the Minerals Management Service office is closed, but which is postmarked on the next day the designated Minerals Management Service office is open. This issue, and the comments received, were extensively discussed under § 3103.2–2 earlier in this preamble. This discussion is not repeated here. The final rulemaking has adopted changes to these sections to make them consistent with § 3103.2–2 of the final rulemaking. The final rulemaking also adopts this change in §§ 3205.3–2, 3244.2–1, and 3244.2–2 for consistency.

One of the comments received on § 3108.2–2(a)(3) of the proposed rulemaking questioned the provision concerning payment of accrued royalty if a terminated lease becomes productive prior to its reinstatement. The comment requested that this provision be clarified as to when such payment is due. Three comments recommended that the final rulemaking amend this section to remove the requirement for providing proof to the Bureau of Land Management of payment of royalty to the Minerals Management Service (MMS) as a condition of a Class I reinstatement. The final rulemaking has adopted a change removing all words after the word "Service" in the proposed rulemaking. Payment of accrued royalty is required prior to reinstatement, but would not be required to be paid within the 60-day period required for submission of the petition for reinstatement. The Bureau would verify that such payment had been made to the MMS office

Part 3130—Authority Citation

One comment recommended that the final rulemaking add the Naval Petroleum Reserves Production Act of 1976 (42 U.S.C. 6504 *et seq.*) to the authority citation section. The final rulemaking has not adopted this recommendation because that Act does not provide specific authority for leasing in the National Petroleum Reserve—Alaska, which is the subject of this part.

Section 3135.1–1 Transfers and extensions, general.

One comment on paragraph (d) of this section of the proposed rulemaking recommended that the word "assignment" be changed to the word "transfer". The final rulemaking has adopted this recommended change.

Section 3150.0–1 Purpose.

A number of the comments on the geophysical exploration provisions contained in Part 3150 of the proposed rulemaking indicated some confusion regarding to whom, and in what situation, the provisions of this portion of the rulemaking would apply. The confusion seemed to result from the abbreviated language contained in § 3150.0–1 of the proposed rulemaking. To resolve this uncertainty, the final rulemaking revises the language of this section to clearly state which parties must comply, and under what circumstances the regulations apply with respect to authorization from the Bureau of Land Management to conduct geophysical exploration operations. The final rulemaking also clarifies a similar provision in § 3209.0–1 concerning geophysical exploration for geothermal resources for consistency.

Section 3150.0–3 Authority.

One comment noted that 2 citations had been omitted from the authority section of the proposed rulemaking and recommended that the final rulemaking include them. The final rulemaking has adopted the recommendation for inclusion of the citation of the Independent Offices Appropriations Act of 1952 (31 U.S.C. 483a), but has not included the citation of the Act of May 21, 1930 (30 U.S.C. 301–306), because it has no application to geophysical exploration. The final rulemaking also adds the citation for the Naval Petroleum Reserve Production Act of 1976 (42 U.S.C. 6504) to address exploration activities for the National Petroleum Reserve—Alaska. These new citations also are added to the authority citation provision of the final rulemaking.

Section 3150.0–5 Definitions.

One comment on § 3150.0–5(a) of the proposed rulemaking recommended that the final rulemaking remove the last sentence of the definition because it repeats language contained in § 3150.0–1. The final rulemaking has adopted this suggestion.

Several comments on the definition of the term "public lands," appearing in this section of the proposed rulemaking, indicated some confusion with the definition of the term and the applicability of the rulemaking to various types of lands. After careful review, the final rulemaking has removed the term from §§ 3150.0–5 and 3209.0–5 because it is adequately defined in the Federal Land Policy and Management Act.

Section 3150.1 Suspension, revocation, or cancellation.

One comment on this section questioned why the language in the existing regulations was being changed, and suggested that language dealing with compliance with State standards was needed. After careful review, the final rulemaking has restored the language of the existing regulations

because this section is sufficient, with a change in the beginning to clarify that the right to conduct exploration may be suspended, revoked, or canceled.

Section 3151.1 Notice of intent to conduct oil and gas geophysical exploration operations.

Eight comments were received on this section of the proposed rulemaking. Most of them were supportive of the change made by the proposed rulemaking. However, some of the comments expressed concern that the 5 days allowed for processing a Notice of Intent may not be adequate in all cases. The final rulemaking has revised this section of the proposed rulemaking to reflect the changes made in § 3150.0–1 of the final rulemaking to allow for situations in which additional time is needed to complete the review of the Notice of Intent. The change requires that in those instances when the Notice of Intent cannot be processed in 5 working days of being filed, the authorized officer shall promptly notify the operator of when processing will be completed and state the reason for the delay.

Section 3152.1 Application for oil and gas geophysical exploration permit.

Although no comments were received on this section of the proposed rulemaking, the final rulemaking has adopted a change to make its provisions consistent with changes made by the final rulemaking in § 3150.0–1.

Section 3154.1 Types of bonds.

The only comment on this section questioned the effect of lease terms on a lessee who wishes to conduct geophysical exploration operations on his/her lease. This comment resulted in the word "lease" being removed from both this section of the final rulemaking and § 3154.3 to provide consistency. The word "lease" is not needed because a bond providing exclusive coverage for geophysical exploration operations must fulfill only the requirements contained in the regulations and the Notice of Intent or permit to conduct geophysical exploration operations. If stipulations or other requirements specified at the time of lease issuance are relevant to geophysical exploration operations, such stipulations or requirements also would be included in the Notice of Intent or permit. Further review of this section of the proposed rulemaking revealed that there were two technical flaws. The proposed rulemaking would have required that lessees obtain riders to their lease bonds in order to do geophysical exploration on their own leases. Such a requirement is not necessary because lease bonds already cover all operations by a lessee on his/her leasehold. The final rulemaking has adopted language to resolve this technical problem. The proposed rulemaking also inadvertently removed the provision in the existing regulations that allows the holder of a statewide or nationwide bond to obtain a rider that would allow geophysical exploration to be conducted on lands that the holder did not have under lease. The final rulemaking has retained this provision of the existing regulations.

Section 3154.3 Bond cancellation or termination of liability.

Several comments were received on this section of the proposed rulemaking. All comments were concerned that the 30-day period for inspection of lands subject to geophysical exploration under a Notice of Intent was not adequate. In response to these comments, the final rulemaking retains the 90-day period of the existing regulations.

Section 3160.0–5 Definitions.

Several comments were received on this section of the proposed rulemaking. The final rulemaking, in response to concerns raised in these comments amends the definition of the term "operator" to clarify that there is no distinction between an operator, designated operator, and an official Designation of Operator. The amendment also makes the definition identical to that contained in § 3100.0–5(a) of the final rulemaking. As discussed earlier in the preamble in conjunction with that section, the definition has been revised to mean any person or entity that notifies the Bureau of Land Management that he/she is accepting the responsibilities for conducting operations on a lease or a portion thereof. Under the new definition, any individual or entity that accepts the responsibility for conducting operations on a lease, whether it be the lessee, owner of operating rights (sublessee), or a contractor on behalf of an operator, is responsible for the default that may occur in the conduct of activities in exploration, development, and production under the terms and conditions of the lease. Further, the revisions made by the final rulemaking to the various terms in § 3160.0–5 provide that the individual holding the operating rights to a lease is responsible for all obligations relating to the responsibilities transferred by the lessee of record, including drainage. Accordingly, the final rulemaking also revises the term "lessee" to mean a person or entity holding record title to a lease and adds a definition of "operating rights owner" which conforms to the revised definition of the term "operator." To bring the provisions of Part 3160 into conformance with these definition changes, the final rulemaking has substituted the word "operator" or the term "operating rights owner" for the word "lessee" in numerous sections of the final rulemaking. Finally, this final rulemaking adds definitions of several terms from the final rulemaking to implement the Federal Oil and Gas Royalty Management Act which was published in the **Federal Register** on February 20, 1987 (52 FR 5384).

Section 3162.3–1 Drilling applications and plans.

Three comments received on this section of the proposed rulemaking were a followup to comments made on Subpart 3106 of the proposed rulemaking that objected to the policy of the Bureau of Land Management not to adjudicate transfers of operating rights (subleases). One of the comments suggested that this change was designed to insulate the Bureau from disputes on public lands when an application for development is approved by the authorized officer. The response to these comments has previously been discussed in this preamble under subpart 3106. The final rulemaking has not adopted this suggested change.

Section 3165.1 Relief from operating and producing requirements.

Two comments submitted on the provisions of the proposed rulemaking concerning § 3103.4–2 also recommended that the final rulemaking make revisions in this section of the existing regulations in order to address the provision for a suspension of operations and/or production consistently. The final rulemaking adopts this recommendation and amends § 3165.1 of the existing regulations to be consistent with § 3103.4–2 of the final rulemaking.

Section 3165.4 Appeals.

The final rulemaking clarifies the language in § 3165.4(c) concerning the effect of an appeal on compliance requirements. This change is made to ensure that the provision in this regulation, which made the decision of the authorized officer effective pending an appeal, has the same effect and meaning as it did prior to its amendment on February 20, 1987 (52 FR 5384). The Department of the Interior Board of Land Appeals has suggested that the meaning and effect of this regulation may have been changed by the 1987 amendment (see *Southern Utah*

Wilderness Alliance, 100 IBLA 63 (1987)). No change was ever intended by the amendment and this final rulemaking makes a technical correction to clarify this matter.

Section 3186.1 Model onshore unit agreement for unproven areas.

Changes have been made in sections 9, 13–15, 18, and 20 of the model unit agreement to conform these provisions to the final rulemaking, which defines "operator" and establishes the public interest requirement for unit approval.

Subpart 3200—Geothermal Resources Leasing; General

One general comment on this subpart of the proposed rulemaking recommended that the final rulemaking include language to reflect the statutory mandate in section 115 of the Department of the Interior and Related Agencies Appropriations Act of 1987 (Pub. L. 99–591) for protecting selected thermal features in specific National Park System units. After careful consideration of this comment, the final rulemaking has not adopted the suggestion because the provisions of this Act are very specific. These protective requirements are directly applied to areas affected by the law and are being implemented through interagency agreements and memoranda of agreement.

Section 3200.0–5 Definitions.

Changes made in this section by the final rulemaking have been discussed previously in this preamble under §§ 3100.0–5 and 3160.0–5.

Section 3200.1 Competitive and noncompetitive leasing areas.

Two comments were received on this section of the proposed rulemaking which questioned the use of the phrase "competitive interest" in connection with the classification of known geothermal resource areas. The comments on this issue appeared to misunderstand how "competitive interest" is used in determining whether lands should be classified as known geothermal resource areas. The existence of competitive interest in an area does not automatically compel classification or require that the lands remain classified as a known geothermal resource area. The overriding interest of the Bureau of Land Management is to ensure that lands which have not been subject to geothermal leasing, where there is little or no classification information available, are reviewed for known geothermal resource area classification because of competitive interest. The final rulemaking has adopted this provision of the proposed rulemaking without change.

Section 3210.2–1 Application.

Two comments were received on this section of the proposed rulemaking. One of the comments made the point that the change in the proposed rulemaking to require a different number of copies of an application to lease public domain lands versus the number of copies required for acquired lands was incorrect. This comment has been adopted and the final rulemaking has corrected this section.

The second comment recommended the addition of language similar to that found in § 3111.2–1(d)(2) of the existing regulations with respect to conforming the legal description of an existing lease to a subsequent resurvey or amended protraction survey. For consistency with the existing oil and gas regulations, the final rulemaking has adopted this suggested change.

Section 3220.3 Publication of the notice.

One comment was received on this section of the proposed rulemaking. The comment recommended the deletion of the language requiring the successful bidder to pay a proportionate share of the total cost of the publication of the notice. The final rulemaking has not adopted this recommended change. The policy of the Bureau of Land Management is to defray the costs associated with the programs under its jurisdiction, in accordance with the provisions in the Federal Land Policy and Management Act.

Section 3220.4 Bidding requirements.

Several comments on this section of the proposed rulemaking expressed concern about the deletion from paragraph (a) of the provision allowing the option to pay the balance of the bonus bid, either by a single bid or in two equal annual installments. Three of the comments indicated a preference that the provision of the existing regulations be retained. Two comments recommended that the final rulemaking change the section to allow installment payments based on a high bid threshold. The change made by the proposed rulemaking was designed to reduce lease administration and processing costs, and also to minimize the loss of revenues and interest moneys to the United States by requiring all bonus moneys to be paid prior to lease issuance. The final rulemaking adopts the language of paragraph (a) of the proposed rulemaking without change.

Section 3220.5 Award of lease.

Two comments on paragraph (c) of this section of the proposed rulemaking raised concerns about removal of the 30-day period during which the authorized officer is to accept or reject the highest bid. After careful review of this recommendation, the final rulemaking has adopted language to indicate that if the authorized officer is unable to make a decision within 30 days, the apparent high bidder will be notified and informed of the reason for the delay, and provided an anticipated date when the decision will be made.

Several comments were offered on paragraph (d) of this section of the proposed rulemaking. All objected to the reduction of the period for the successful bidder to execute the lease forms from 30 to 15 days. This change, however, is in response to a report by the General Accounting Office that the United States would benefit from having use of the lease rentals and bonus 15 days earlier. The final rulemaking has adopted the language of paragraph (d) of the proposed rulemaking without change.

Editorial and technical changes, and grammatical corrections, have been made as needed.

The principal authors of this final rulemaking are Gloria Jean Austin, Rob Cervantes, Karl Duscher, Cynthia Embretson, Lois Mason, Judy Reed, and Mona Schermerhorn of the Division of Fluid Mineral Leasing and Sie Ling Chiang of the Division of Fluid Mineral Operations, all of the Bureau of Land Management, assisted by the staff of the Division of Legislation and Regulatory Management, Bureau of Land Management.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

The final rulemaking will not have an adverse effect on investment, competition, employment, productivity or the ability of U.S. firms to compete with foreign enterprises. These amendments will affect all businesses, large and small, equally. In addition, the changes will simplify and clarify the existing regulations, reducing the regulatory burden on the public.

The information collection requirements contained in this final rulemaking have been cleared by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance numbers 1004–0034, 1004–0067, 1004–0074, 1004–0132, 1004–0134, 1004–0135,

1004–0136, 1004–0137, 1004–0138, and 1004–0145.

List of Subjects

43 CFR Part 3000

Public lands—classification, Public lands—mineral resources.

43 CFR Part 3040

Oil and gas exploration, Public Lands—mineral resources.

43 CFR Part 3100

Administrative practice and procedure, Environmental protection, Mineral royalties, Oil and gas reserves, Public lands—classification, Public lands—mineral resources, Surety bonds.

43 CFR Part 3130

Alaska, Government contracts, Mineral royalties, Oil and gas exploration, Oil and gas reserves, Public lands—mineral resources, Reporting and recordkeeping requirements, Surety bonds.

43 CFR Part 3150

Oil and gas exploration, Public lands—mineral resources.

43 CFR Part 3160

Environmental protection, Government contracts, Mineral royalties, Oil and gas exploration, Public lands—mineral resources, Reporting and recordkeeping requirements.

43 CFR Part 3180

Government contracts, Oil and gas reserves, Public lands—mineral resources.

43 CFR Part 3200

Environmental protection, Geothermal energy, Mineral royalties, Public lands—classification, Public lands—mineral resources, Surety bonds.

43 CFR Part 3210

Geothermal energy, Public lands—mineral resources.

43 CFR Part 3220

Geothermal energy, Public lands—mineral resources.

43 CFR Part 3240

Geothermal energy, Mineral royalties, Public lands—mineral resources, Water resources.

43 CFR Part 3250

Electric power, Geothermal energy, Public lands—mineral resources.

43 CFR Part 3260

Environmental protection, Geothermal energy, Government contracts, Public lands—mineral resources, Reporting and recordkeeping requirements.

Under the authorities cited below, Parts 3000 and 3040, Group 3000, Parts 3100, 3130, 3150, 3160, and 3180, Group 3100, and Parts 3200, 3210, 3220, 3240, 3250, and 3260, Group 3200, Subchapter C, Chapter II of Title 43 of the Code of Federal Regulations, are amended as set forth below.

James E. Cason,

Acting Assistant Secretary of the Interior.

April 20, 1988.

PART 3000—[AMENDED]

1. The authority citation for Part 3000 is revised to read:

Authority: Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359), the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101 et seq.), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.), the Act of May 21, 1930 (30 U.S.C. 301–306), the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35), the Independent Offices Appropriations Act of 1952 (31 U.S.C. 483a), the Department of the Interior Appropriations Act, Fiscal Year 1981 (42 U.S.C. 6508), and the Attorney General's Opinion of April 2, 1941 (40 Op. Atty. Gen. 41).

§ 3000.0–5 [Amended]

2. Section 3000.0–5 is amended by:

A. Revising paragraph (g) to read:

(g) "Public domain lands" means lands, including mineral estates, which never left the ownership of the United States, lands which were obtained by the United States in exchange for public domain lands, lands which have reverted to the ownership of the United States through the operation of the public land laws and other lands specifically identified by the Congress as part of the public domain.

B. Revising paragraph (k) to read:

(k) "Party in interest" means a party who is or will be vested with any interest under the lease as defined in paragraph (l) of this section. No one is a sole party in interest with respect to an application, offer, competitive bid or lease in which any other party has an interest;

and

C. Revising paragraph (l) to read:

(l) "Interest" means ownership in a lease or prospective lease of all or a portion of the record title, working interest, operating rights, overriding royalty, payments out of production, carried interests, net profit share or similar instrument for participation in the benefit derived from a lease. An "interest" may be created by direct or indirect ownership, including options. "Interest" does not mean stock ownership, stockholding or stock control in an application, offer, competitive bid or lease, except for purposes of acreage limitations in § 3101.2 of this title and qualifications of lessees in Subpart 3102 of this title.

3. A new § 3000.8 is added to read:

§ 3000.8 Management of Federal minerals from reserved mineral estates.

Where nonmineral public land disposal statutes provide that in conveyances of title all or certain minerals shall be reserved to the United States together with the right to prospect for, mine and remove the minerals under applicable law and regulations as the Secretary may prescribe, the lease or sale, and administration and management of the use of such minerals shall be accomplished under the regulations of groups 3000 and 3100 of this title. Such mineral estates include, but are not limited to, those that have been or will be reserved under the authorities of the Small Tract Act of June 1, 1938, as amended (43 U.S.C. 682(b)) and the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.).

PART 3040—[REMOVED]

4. Part 3040 is removed in its entirety.

PART 3100—[AMENDED]

5. The authority citation for Part 3100 is revised to read:

Authority: The Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101 et seq.), the Act of May 21, 1930 (30 U.S.C. 301–306), the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.), the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35), the National Wildlife Refuge Administration Act of 1966 (16 U.S.C. 668dd-ee), the Attorney General's Opinion of April 2, 1941 (40 Op. Atty. Gen. 41) and the Independent Offices Appropriations Act of 1952 (31 U.S.C. 483a).

§ 3100.0–3 [Amended]

6. Section 3100.0–3 is amended by:

A. Revising paragraph (a)(2)(i) to read:

(i) Units of the National Park System, including lands withdrawn by section 206 of the Alaska National Interest Lands Conservation Act, except as

provided in paragraph (g)(4) of this section;

B. Revising paragraph (b)(2)(i) to read:

(i) Units of the National Park System, except as provided in paragraph (g)(4) of this section;

and

C. Amending paragraph (e) by inserting after the phrase "excess to" the phrase "or surplus by".

§ 3100.0-5 [Amended]

7. Section 3100.0-5 is amended by:

A. Revising paragraph (a) to read:

(a) "Operator" means any person or entity, including, but not limited to, the lessee or operating rights owner, who has stated in writing to the authorized officer that it is responsible under the terms and conditions of the lease for the operations conducted on the leased lands or a portion thereof.

B. Amending paragraph (d) by removing the last sentence thereof in its entirety;

C. Revising paragraph (e) to read:

(e) "Transfer" means any conveyance of an interest in a lease by assignment, sublease or otherwise. This definition includes the terms: "Assignment" which means a transfer of all or a portion of the lessee's record title interest in a lease; and "sublease" which means a transfer of a non-record title interest in a lease, i.e., a transfer of operating rights is normally a sublease and a sublease also is a subsidiary arrangement between the lessee (sublessor) and the sublessee, but a sublease does not include a transfer of a purely financial interest, such as overriding royalty interest or payment out of production, nor does it affect the relationship imposed by a lease between the lessee(s) and the United States.

D. Removing paragraph (f) in its entirety;

E. Redesignating paragraph (g) as paragraph (f);

F. Removing paragraph (h) in its entirety;

G. Redesignating paragraphs (i) and (j) as paragraphs (g) and (h), respectively;

H. Amending newly designated paragraph (h), formerly paragraph (j), by removing from paragraph (h)(1) the phrase "drilling or" and by removing from paragraph (h)(2) the last sentence thereof; and

I. Redesignating paragraphs (k) and (l) as paragraphs (i) and (j), respectively, and revising them to read as follows:

(i) "Lessee" means a person or entity holding record title in a lease issued by the United States

(j) "Operating rights owner" means a person or entity holding operating rights in a lease issued by the United States. A lessee also may be an operating rights owner if the operating rights in a lease or portion thereof have not been severed from record title.

§ 3100.2-2 [Amended]

8. Section 3100.2-2 is amended by removing from the last sentence thereof the citation "30 CFR 221.21" and replacing it with the citation "§ 3162.2(a) of this title."

§ 3100.4-1 [Amended]

9. Section 3100.4-1(b) is amended by removing from where it appears in the opening paragraph the phrase "notice or option" and replacing it with the phrase "notice of option", by removing from paragraph (b)(3) the phrase "to the option; and" and replacing it with the phrase "to the option, including the date and expiration date of the option; and", and by removing from paragraph (b)(4) the phrase "signed copy of notice" and replacing it with the phrase "signed copy or notice".

10. Section 3100.4-3 is revised to read:

§ 3100.4-3 Option statements.

Each option holder shall file in the proper BLM office within 90 days after June 30 and December 31 of each year a statement showing as of the prior June 30 and December 31, respectively:

(a) Any changes to the statements submitted under § 3100.4-1(b) of this title, and

(b) The number of acres covered by each option and the total acreage of all options held in each State.

11. Sections 3101.1-1 and 3101.1-2 are revised to read:

§ 3101.1-1 Lease form.

A lease shall be issued only on the standard form approved by the Director.

§ 3101.1-2 Surface use rights.

A lessee shall have the right to use so much of the leased lands as is necessary to explore for, drill for, mine, extract, remove and dispose of all the leased resource in a leasehold subject to: Stipulations attached to the lease; restrictions deriving from specific, nondiscretionary statutes; and such reasonable measures as may be required by the authorized officer to minimize adverse impacts to other resource values, land uses or users not addressed in the lease stipulations at the time operations are proposed. To the extent consistent with lease rights granted, such reasonable measures may include, but are not limited to, modification to siting or design of facilities, timing of operations, and specification of interim and final reclamation measures. At a minimum, measures shall be deemed consistent with lease rights granted provided that they do not: require relocation of proposed operations by more than 200 meters; require that operations be sited off the leasehold; or prohibit new surface disturbing operations for a period in excess of 60 days in any lease year.

12. A new § 3101.1-3 is added to read:

§ 3101.1-3 Stipulations and information notices.

The authorized officer may require stipulations as conditions of lease issuance. Stipulations shall become part of the lease and shall supersede inconsistent provisions of the standard lease form. A lessee shall be required to indicate acceptance of stipulations prior to the issuance of a lease. Any party submitting a bid under Subpart 3120 of this title shall be deemed to have agreed to stipulations applicable to the specific parcel as indicated in a list or notice of parcels available from the proper BLM office. An information notice has no legal consequences, except to give notice of existing requirements, and may be attached to a lease by the authorized officer at the time of lease issuance to convey certain operational, procedural or administrative requirements relative to lease management within the terms and conditions of the standard lease form. Information notices shall not be a basis for denial of lease operations.

§ 3101.2-1 [Amended]

13. Section 3101.2-1(b) is amended by removing from the second sentence thereof all after the word "Alaska" and replacing it with the phrase "begins at the northeast corner of the Tetlin National Wildlife Refuge as established on December 2, 1980 (16 U.S.C. 3101), at a point on the boundary between the United States and Canada, then northwesterly along the northern boundary of the refuge to the left limit of the Tanana River (63°9'38" north latitude, 142°20'52" west longitude), then westerly along the left limit to the confluence of the Tanana and Yukon Rivers, and then along the left limit of the Yukon River from said confluence to its principal southern mouth."

§ 3101.2-3 [Amended]

14. Section 3101.2-3 is amended by adding at the end thereof a new sentence to read:

* * * Acreage subject to offers to lease, overriding royalties and payments

out of production shall not be included in computing accountable acreage.

§ 3101.2–4 [Amended]

15. Section 3101.2–4(b) is amended by removing from where it appears the phrase "bring the lessee within" and replacing it with the phrase "comply with".

§ 3101.2–5 [Amended]

16. Section 3101.2–5 is amended by removing from where it appears the phrase "and co-leassees" and replacing it with the phrase "and co-parties", and by removing from the last sentence thereof the word "lessee" and replacing it with the word "party".

§ 3101.3–1 [Amended]

17. Section 3101.3–1 is amended by removing from where it appears in the second sentence the word "lessee" and replacing it with the word "operator".

§ 3101.3–2 [Amended]

18. Section 3101.3–2 is amended by removing from where it appears the word "noncompetitive" and by removing from where it appears the word "without" and replacing it with the word "outside".

§ 3102.1 [Amended]

19. Section 3102.1 is amended by removing from where it appears at the beginning of the section the word "Leases" and replacing it with the phrase "Leases or interests therein".

20. Section 3102.2 is revised to read:

§ 3102.2 Aliens.

Leases or interests therein may be acquired and held by aliens only through stock ownership, holding or control in a present or potential lessee that is incorporated under the laws of the United States or of any State or territory thereof, and only if the laws, customs or regulations of their country do not deny similar or like privileges to citizens or corporations of the United States. If it is determined that a country has denied similar or like privileges to citizens or corporations of the United States, it would be placed on a list available from any Bureau of Land Management State office.

§ 3102.3 [Amended]

21. Section 3102.3 is amended by adding a new sentence at the end thereof to read: "Such legal guardians or trustees shall be citizens of the United States or otherwise meet the provisions of § 3102.1 of this title."

22. Section 3102.4 is revised to read:

§ 3102.4 Signature.

(a) The original of an offer or bid shall be signed in ink and dated by the present or potential lessee or by anyone authorized to sign on behalf of the present or potential lessee.

(b) Three copies of a transfer of record title or of operating rights (sublease), as required by section 30a of the act, shall be originally signed and dated by the transferor or anyone authorized to sign on behalf of the transferor. However, a transferee, or anyone authorized to sign on his or her behalf, shall be required to sign and date only 1 original request for approval of a transfer.

(c) Documents signed by any party other than the present or potential lessee shall be rendered in a manner to reveal the name of the present or potential lessee, the name of the signatory and their relationship. A signatory who is a member of the organization that constitutes the present or potential lessee (e.g., officer of a corporation, partner of a partnership, etc.) may be requested by the authorized officer to clarify his/her relationship, when the relationship is not shown on the documents filed.

(d) Submission of a qualification number does not meet the requirements of paragraph (c) of this section.

23. Section 3102.5 is revised and §§ 3102.5–1, 3102.5–2 and 3102.5–3 are added to read:

§ 3102.5 Compliance, certification of compliance and evidence.

§ 3102.5–1 Compliance.

In order to own, hold, or control an actual or potential interest in a lease or prospective lease, all parties, including corporations, and all members of associations, including partnerships of all types, shall, without exception, be qualified and in compliance with the act. Compliance means that the lessee, potential lessee and all such parties (as defined in § 3000.0–5(k)) are:

(a) Citizens of the United States (See § 3102.1) or alien stockholders in a corporation organized under State or Federal law (See § 3102.2);

(b) In compliance with the Federal acreage limitations (See § 3101.2);

(c) Not minors (See § 3102.3);

(d) Not participants in any agreement, scheme, plan or arrangement prohibited in relation to oil and gas leasing; and

(e) Except for an assignment or transfer under Part 3106 of this title, in compliance with section 2(a)(2)(A) of the act, in which case the signature on an offer or lease constitutes evidence of compliance. A lease issued to any entity in violation of this paragraph (e) shall be subject to the cancellation provisions of § 3108.3 of this title. The term 'entity' is defined at § 3400.0–5(rr) of this title.

§ 3102.5–2 Certification of compliance.

Any party(s) seeking to obtain an interest in a lease shall certify it is in compliance with the act as set forth in § 3102.5–1 of this title. A party(s) that is a corporation or publicly traded association, including a publicly traded partnership, shall certify that constituent members of the corporation, association or partnership holding or controlling more than 10 percent of the instruments of ownership fo the corporation, association or partnership are in compliance with the act. Execution and submission of an offer, competitive bid form, or request for approval of a transfer of record title or of operating rights (sublease), constitutes certification of compliance.

§ 3102.5–3 Evidence of compliance.

The authorized officer may request at any time further evidence of compliance and qualification from any party holding or seeking to hold an interest in a lease. Failure to comply with the request of the authorized officer shall result in adjudication of the action based on the incomplete submission.

§ 3103.1–2 [Amended]

24. Section 3103.1–2 is amended by:

A. Amending paragraph (a)(1) by removing from where it appears the phrase "applications for approval of an instrument of" and replacing it with the phrase "requests for approval of a"; and

B. Revising paragraph (a)(2) to read:

(a) * * *

(2) All second-year and subsequent rentals, except for leases specified in paragraph (b) of this section, shall be paid to the Service at the following address: Minerals Management Service, Royalty Management Program/BRASS, Box 5640 T.A., Denver, Colorado 80217.

25. Section 3103.2–2 introductory text is revised to read:

§ 3103.2–2 Annual rental payments.

Rentals shall be paid on or before the anniversary date. A full year's rental shall be submitted even when less than a full year remains in the lease term, except as provided in § 3103.4–2(d) of this title. Failure to make timely payment shall cause a lease to terminate automatically by operation of law. If the designated Service office is not open on the anniversary date, payment received on the next day the designated Service office is open to the public shall be deemed to be timely made. Payments made to an improper BLM or Service office shall be returned and shall not be forwarded to the designated Service

office. Rental shall be payable at the following rates:

§ 3103.3–1 [Amended]

26. Section 3103.3–1 is amended by:

A. Amending paragraph (b) by removing from where it appears the citation "30 CFR Part 221, 'Oil and Gas Operating Regulations.' " and replacing it with the citation "§ 3162.7–4 of this title."

B. Removing paragraphs (c) and (d) in their entirety;

C. Redesignating paragraph (e) as paragraph (c); and

D. Adding a new paragraph (d) to read:

(d) Leases that qualify under specific provisions of the Act of August 8, 1946 (30 U.S.C. 226c) may apply for a limitation of a 12½ percent royalty rate.

§ 3103.3–3 [Removed]

27. Section 3103.3–3 is removed in its entirety.

§ 3103.4–1 [Amended]

28. Section 3103.4–1 is amended by:

A. Amending paragraph (b)(1) by removing from where it appears the phrase "in triplicate" and by removing from where it appears in the second sentence thereof the phrase "the proper BLM office name, the name of the record title holder and operator or sub-lessee," and replacing it with the phrase "the names of the record title holders, operating rights owners (sublessees), and operators for each lease,"; and

B. Amending paragraph (c) by removing from where it appears in the second sentence the phrase "royalties or payments out of production" and replacing it with the phrase "overriding royalties, payments out of production, or similar interests" and by removing from where it appears the first time in the third sentence the word "royalties" and replacing it with the phrase "royalties or similar payments".

29. Section 3103.4–2 is revised to read:

§ 3103.4–2 Suspension of operations and/or production.

(a) A suspension of all operations and production may be directed or consented to by the authorized officer only in the interest of conservation of natural resources. A suspension of operations only or a suspension of production only may be directed or consented to by the authorized officer in cases where the lessee is prevented from operating on the lease or producing from the lease, despite the exercise of due care and diligence, by reason of *force majeure*, that is, by matters beyond the reasonable control of the lessee. Applications for any suspension shall be filed in the proper BLM office. Complete information showing the necessity of such relief shall be furnished.

(b) The term of any lease shall be extended by adding thereto the period of the suspension, and no lease shall be deemed to expire during any suspension.

(c) A suspension shall take effect as of the time specified in the direction or assent of the authorized officer, in accordance with the provisions of § 3165.1 of this title.

(d) Rental and minimum royalty payments shall be suspended during any period of suspension of all operations and production directed or assented to by the authorized officer beginning with the first day of the lease month in which the suspension of all operations and production becomes effective, or if the suspension of all operations and production becomes effective on any date other than the first day of a lease month, beginning with the first day of the lease month following such effective date. Rental and minimum royalty payments shall resume on the first day of the lease month in which the suspension of all operations and production is terminated. Where rentals are creditable against royalties and have been paid in advance, proper credit shall be allowed on the next rental or royalty due under the terms of the lease. Rental and minimum royalty payments shall not be suspended during any period of suspension of operations only or suspension of production only.

(e) Where all operations and production are suspended on a lease on which there is a well capable of producing in paying quantities and the authorized officer approves resumption of operations and production, such resumption shall be regarded as terminating the suspension, including the suspension of rental and minimum royalty payments, as provided in paragraph (d) of this section.

(f) The relief authorized under this section also may be obtained for any Federal lease included within an approved unit or cooperative plan of development and operation. Unit or cooperative plan obligations shall not be suspended by relief obtained under this section but shall be suspended only in accordance with the terms and conditions of the specific unit or cooperative plan.

§ 3104.1 [Amended]

30. Section 3104.1(a) is revised to read:

(a) Prior to the commencement of surface disturbing activities related to drilling operations, the lessee, operating rights owner (sublessee), or operator shall submit a surety or personal bond, conditioned upon compliance with all of the terms and conditions of the entire leasehold(s) covered by the bond, as described in this subpart.

§ 3104.3 [Amended]

31. Section 3104.3(b) is amended by removing from the end thereof the phrase "or operations nationwide." and replacing it with the phrase "and operations nationwide."

32. Section 3104.6 is revised to read:

§ 3104.6 Where filed and number of copies.

All bonds shall be filed in the proper BLM office on a current form approved by the Director. A single copy executed by the principal or, in the case of surety bonds, by both the principal and an acceptable surety is sufficient. A bond filed on a form not currently in use shall be acceptable, unless such form has been declared obsolete by the Director prior to the filing of such bond. For purposes of §§ 3104.2 and 3104.3(a) of this title, bonds or bond riders shall be filed in the Bureau State office having jurisdiction of the lease or operations covered by the bond or rider. Nationwide bonds may be filed in any Bureau State office (See § 1821.2–1).

§ 3104.7 [Amended]

33. Section 3104.7 is amended by revising paragraph (b) to read:

(b) After default, where the obligation in default equals or is less than the face amount of the bond(s), the principal shall either post a new bond or restore the existing bond(s) to the amount previously held or a larger amount as determined by the authorized officer. In lieu thereof, the principal may file separate or substitute bonds for each lease covered by the deficient bond(s). Where the obligation incurred exceeds the face amount of the bond(s), the principal shall make full payment to the United States for all obligations incurred that are in excess of the face amount of the bond(s) and shall post a new bond in the amount previously held or such larger amount as determined by the authorized officer. The restoration of a bond or posting of a new bond shall be made within 6 months or less after receipt of notice from the authorized officer. Failure to comply with these requirements may subject all leases covered by such bond(s) to cancellation under the provisions of § 3108.3 of this title.

§ 3104.8 [Amended]

34. Section 3104.8 is amended by removing from where it appears the phrase "alternative bond" and replacing it with the phrase "replacement bond".

35. Section 3105.2–3 is revised to read:

§ 3105.2–3 Requirements.

(a) The communitization or drilling agreement shall describe the separate tracts comprising the drilling or spacing unit, shall show the apportionment of the production or royalties to the several parties and the name of the operator, and shall contain adequate provisions for the protection of the interests of the United States. The agreement shall be signed by or on behalf of all necessary parties and shall be filed prior to the expiration of the Federal lease(s) involved in order to confer the benefits of the agreement upon such lease(s).

(b) The agreement shall be effective as to the Federal lease(s) involved only if approved by the authorized officer. Approved communitization agreements are considered effective from the date of the agreement or from the date of the onset of production from the communitized formation, whichever is earlier, except when the spacing unit is subject to a State pooling order after the date of first sale, then the effective date of the agreement may be the effective date of the order.

(c) The public interest requirement for an approved communitization agreement shall be satisfied only if the well dedicated thereto has been completed for production in the communitized formation at the time the agreement is approved or, if not, that the operator thereafter commences and/or diligently continues drilling operations to a depth sufficient to test the communitized formation or establish to the satisfaction of the authorized officer that further drilling of the well would be unwarranted or impracticable. If an application is received for voluntary termination of a communitization agreement during its fixed term or such an agreement automatically expires at the end of its fixed term without the public interest requirement having been satisfied, the approval of that agreement by the authorized officer shall be invalid and no Federal lease shall be eligible for extension under § 3107.4 of this title.

36. A new § 3105.6 is added to read:

§ 3105.6 Consolidation of leases.

Consolidation of leases may be approved by the authorized officer if it is determined that there is sufficient justification and it is in the public interest. Each application for consolidation of leases shall be considered on its own merits. Leases to different lessees for different terms, rental and royalty rates, and those containing provisions required by law that cannot be reconciled, shall not be consolidated. The effective date of a consolidated lease shall be that of the oldest lease involved in the consolidation.

37. Subpart 3106 is revised to read:

Subpart 3106—Transfers by Assignment, Sublease or Otherwise

Sec.

3106.1 Transfers, general.
3106.2 Qualifications of transferees.
3106.3 Filing fees.
3106.4 Forms.
3106.4–1 Transfers of record title and of operating rights (subleases).
3106.4–2 Transfers of other interests, including royalty interests and production payments.
3106.4–3 Mass transfers.
3106.5 Description of lands.
3106.6 Bonds.
3106.6–1 Lease bond.
3106.6–2 Statewide/nationwide bond.
3106.7 Approval of transfer.
3106.7–1 Failure to qualify.
3106.7–2 Continuing responsibility.
3106.7–3 Lease account status.
3106.7–4 Effective date of transfer.
3106.7–5 Effect of transfer.
3106.8 Other types of transfers.
3106.8–1 Heirs and devisees.
3106.8–2 Change of name.
3106.8–3 Corporate merger.

Subpart 3106—Transfers by Assignment, Sublease or Otherwise

§ 3106.1 Transfers, general.

(a) Leases may be transferred by assignment or sublease as to all or part of the acreage in the lease or as to either a divided or undivided interest therein. An assignment of a separate zone or deposit or of part of a legal subdivision shall be disapproved unless the necessity of the assignment is established and it is determined that such assignment is in the best interest of the United States. The rights of the transferee to a lease or an interest therein shall not be recognized by the Department until the transfer has been approved by the authorized officer. A transfer may be withdrawn in writing, signed by the transferor and the transferee, if the transfer has not been approved by the authorized officer. A request for approval of a transfer of a lease or interest in a lease shall be filed within 90 days from the date of its execution. The 90-day filing period shall begin on the date the transferor signs and dates the transfer. If the transfer is filed after the 90th day, the authorized officer may require verification that the transfer is still in force. A transfer of production payments or overriding royalty or other similar payments, arrangements or interests shall be filed in the proper BLM office but shall not require approval.

(b) No transfer of an offer to lease or interest in a lease shall be approved prior to the issuance of the lease.

§ 3106.2 Qualifications of transferees.

Transferees shall comply with the provisions of Subpart 3102 of this title and post any bond that may be required.

§ 3106.3 Filing fees.

Each transfer of record title or of operating rights (sublease) or each transfer of royalty interest, payment out of production or similar interest for each lease, when filed, shall be accompanied by a nonrefundable filing fee of $25. A transfer not accompanied by the required filing fee shall not be accepted and shall be returned.

§ 3106.4 Forms.

§ 3106.4–1 Transfers of record title and of operating rights (subleases).

Each transfer of record title or of an operating right (sublease) shall be filed with the proper BLM office on a current form approved by the Director or exact reproductions of the front and back of such form. A transfer filed on a form not currently in use shall be acceptable, unless such form has been declared obsolete by the Director prior to the filing of the transfer. A separate form for each transfer, in triplicate, originally executed shall be filed for each lease out of which a transfer is made. Only 1 originally executed copy of a transferee's request for approval for each transfer shall be required, including in those instances where several transfers to a transferee have been submitted at the same time (See also § 3106.4–3). Copies of documents other than the current form approved by the Director shall not be submitted. However, reference(s) to other documents containing information affecting the terms of the transfer may be made on the submitted form.

§ 3106.4–2 Transfers of other interests, including royalty interests and production payments.

(a) Each transfer of overriding royalty interest, payment out of production or similar interests created or reserved in a lease in conjunction with a transfer of record title or of operating rights (sublease) shall be described for each lease on the current form when filed.

(b) Each transfer of overriding royalty interest, payment out of production or similar interests created or reserved in a lease independently of a transfer of record title or of operating rights

(sublease), if not filed on the current form, shall be described and shall include the transferee's executed statement as to his/her qualifications under Subpart 3102 of this title. A single executed copy of each such transfer of other interests for each lease shall be filed with the proper BLM office.

§ 3106.4–3 Mass transfers.

(a) A mass transfer may be utilized in lieu of the provisions of §§ 3106.4–1 and 3106.4–2 of this title when a transferor transfers interests of any type in a large number of Federal leases to the same transferee.

(b) Three originally executed copies of the mass transfer shall be filed with each proper BLM office administering any lease affected by the mass transfer. The transfer shall be on a current form approved by the Director or an exact reproduction of both sides thereof, with an exhibit attached to each copy listing the following for each lease:

(1) The serial number;

(2) The type and percent of interest being conveyed; and

(3) A description of the lands affected by the transfer in accordance with § 3106.5 of this title.

(c) One reproduced copy of the form required by paragraph (b) of this section shall be filed with the proper BLM office for each lease involved in the mass transfer. A copy of the exhibit for each lease may be limited to line items pertaining to individual leases as long as that line item includes the information required by paragraph (b) of this section.

(d) A nonrefundable filing fee of $25 for each such interest transferred for each lease, in accordance with the provisions of § 3106.3 of this title, shall accompany a mass transfer.

§ 3106.5 Description of lands.

Each transfer of record title shall describe the lands involved in the same manner as the lands are described in the lease or in the manner required by § 3111.2 of this title, except no land description is required when 100 percent of the entire area encompassed within a lease is conveyed.

§ 3106.6 Bonds.

§ 3106.6–1 Lease bond.

Where a lease bond is maintained by the lessee or operating rights owner (sublessee) in connection with a particular lease, the transferee of record title interest or operating rights in such lease shall furnish, if bond coverage continues to be required, either a proper bond or consent of the surety under the existing bond to become co-principal on such bond if the transferor's bond does not expressly contain such consent. Where bond coverage is provided by an operator, the new operator shall furnish an appropriate replacement bond or provide evidence of consent of the surety under the existing bond to become co-principal on such bond.

§ 3106.6–2 Statewide/nationwide bond.

If the transferee is maintaining a statewide or nationwide bond, a lease bond shall not be required, but the amount of the bond may be increased to an amount determined by the authorized officer in accordance with the provisions of § 3104.5 of this title.

§ 3106.7 Approval of transfer.

§ 3106.7–1 Failure to qualify.

No transfer of record title or of operating rights (sublease) shall be approved if the transferee or any other parties in interest are not qualified to hold the transferred interest(s), or if the bond, should one be required, is insufficient. Transfers are approved for administrative purposes only. Approval does not warrant or certify that either party to a transfer holds legal or equitable title to a lease.

§ 3106.7–2 Continuing responsibility.

The transferor and its surety shall continue to be responsible for the performance of all obligations under the lease until a transfer of record title or of operating rights (sublease) is approved by the authorized officer. If a transfer of record title is not approved, the obligation of the transferor and its surety to the United States shall continue as though no such transfer had been filed for approval. After approval of the transfer of record title, the transferee and its surety shall be responsible for the performance of all lease obligations, notwithstanding any terms in the transfer to the contrary. When a transfer of operating rights (sublease) is approved, the sublessee is responsible for all obligations under the lease rights transferred to the sublessee.

§ 3106.7–3 Lease account status.

A transfer of record title or of operating rights (sublease) in a producing lease shall not be approved unless the lease account is in good standing.

§ 3106.7–4 Effective date of transfer.

The signature of the authorized officer on the official form shall constitute approval of the transfer of record title or of operating rights (sublease) which shall take effect as of the first day of the lease month following the date of filing in the proper BLM office of all documents and statements required by this subpart and an appropriate bond, if one is required.

§ 3106.7–5 Effect of transfer.

A transfer of record title to 100 percent of a portion of the lease segregates the transferred portion and the retained portion into separate leases. Each resulting lease retains the anniversary date and the terms and conditions of the original lease. A transfer of an undivided record title interest or a transfer of operating rights (sublease) shall not segregate the transferred and retained portions into separate leases.

§ 3106.8 Other types of transfers.

§ 3106.8–1 Heirs and devisees.

(a) If an offeror, applicant, lessee or transferee dies, his/her rights shall be transferred to the heirs, devisees, executor or administrator of the estate, as appropriate, upon the filing of a statement that all parties are qualified to hold a lease in accordance with subpart 3102 of this title. No filing fee is required. A bond rider or replacement bond may be required for any bond(s) previously furnished by the decedent.

(b) Any ownership or interest otherwise forbidden by the regulations in this group which may be acquired by descent, will, judgement or decree may be held for a period not to exceed 2 years after its acquisition. Any such forbidden ownership or interest held for a period of more than 2 years after acquisition shall be subject to cancellation.

§ 3106.8–2 Change of name.

A change of name of a lessee shall be reported to the proper BLM office. No filing fee is required. The notice of name change shall be submitted in writing and be accompanied by a list of the serial numbers of the leases affected by the name change. If a bond(s) has been furnished, change of name may be made by surety consent or a rider to the original bond or by a replacement bond.

§ 3106.8–3 Corporate merger.

Where a corporate merger affects leases situated in a State where the transfer of property of the dissolving corporation to the surviving corporation is accomplished by operation of law, no transfer of any affected lease interest is required. A notification of the merger shall be furnished with a list, by serial number, of all lease interests affected. No filing fee is required. A bond rider or replacement bond conditioned to cover the obligations of all affected corporations may be required by the

authorized officer as a prerequisite to recognition of the merger.

§ 3107.1 [Amended]

38. Section 3107.1 is amended by removing from where it appears in the first sentence thereof the phrase "of this title or 30 CFR 226.12," and replacing it with the phrase "and § 3186.1 of this title," and by removing the last sentence thereof and replacing it with the sentences: "Actual drilling operations shall be conducted in a manner that anyone seriously looking for oil or gas could be expected to make in that particular area, given the existing knowledge of geologic and other pertinent facts. In drilling a new well on a lease or for the benefit of a lease under the terms of an approved agreement or plan, it shall be taken to a depth sufficient to penetrate at lease 1 formation recognized in the area as potentially productive of oil or gas, or where an existing well is reentered, it shall be taken to a depth sufficient to penetrate at least 1 new and deeper formation recognized in the area as potentially productive of oil or gas. The authorized officer may determine that further drilling is unwarranted or impracticable."

§ 3107.2-2 [Amended]

39. Section 3107.2-2 is amended by adding immediately after the phrase "because of production" where it appears the phrase "in paying quantities".

§ 3107.2-3 [Amended]

40. Section 3107.2-3 is amended by revising the title to read: "§ 3107.2-3 Leases capable of production."

§ 3107.3-2 [Amended]

41. Section 3107.3-2 is amended by removing the last sentence in its entirety and replacing it with 3 new sentences to read as follows:

* * *. The segregated lease covering the nonunitized portion of the lands shall continue in force and effect for the term of the lease or for 2 years from the date of segregation, whichever is longer. However, for any lease segregated from a unit, if the public interest requirement for the unit is not satisfied, such segregation shall be declared invalid by the authorized officer. Further, the segregation shall be conditioned to state that no operations shall be approved on the segregated portion of the lease past the expiration date of the original lease until the public interest requirement of the unit has been satisfied.

§ 3107.4 [Amended]

42. Section 3107.4 is amended by adding at the end thereof the sentence:

* * * No lease shall be extended if the public interest requirement for an approved cooperative or unit plan or a communitization agreement has not been satisifed as determined by the authorized officer.

§ 3107.6 [Amended]

43. Section 3107.6 is amended by removing from where it appears in the introductory paragraph the citation "§ 3108.2-1" and replacing it with the citation "§ 3108.2".

§ 3107.8-3 [Amended]

44. Section 3107.8-3(b) is amended by removing from where it appears the phrase "out of production in excess of 5 percent" and replacing it with the phrase "out of production or similar interests in excess of 5 percent" and by removing from where it appears the phrase "out of production are reduced to not more than 5 percent" and replacing it with the phrase "out of production or similar interests are reduced to not more than 5 percent".

§ 3108.1 [Amended]

45. Section 3108.1 is amended by adding in the first sentence immediately after the phrase "record title holder" the phrase ", or the holder's duly authorized agent,".

§ 3108.2-1 [Amended]

46. Section 3108.2-1 is amended by:

A. Revising paragraph (a) to read:

(a) Except as provided in paragraph (b) of this section, any lease on which there is no well capable of producing oil or gas in paying quantities shall automatically terminate by operation of law (30 U.S.C. 188) if the lessee fails to pay the rental at the designated Service office on or before the anniversary date of such lease. However, if the designated Service office is closed on the anniversary date, a rental payment received on the next day the Service office is open to the public shall be considered as timely made.

and

B. Amending paragraph (b) by removing from where it appears in the first sentence the phrase "stated in a bill," and replacing it with the phrase "stated in a bill rendered by the designated Service office,", by revising the third sentence thereof to read "The designated Service office shall send a Notice of Deficiency to the lessee." and by removing from where it appears at the end of the fourth sentence the phrase "the proper BLM office or the Service, as appropriate." and replacing it with the phrase "the designated Service office."

§ 3108.2-2 [Amended]

47. Section 3108.2-2(a) is amended by:

A. Amending paragraph (a)(2) by removing from the end thereof the phrase "lessee; and" and replacing it with the phrase "lessee (reasonable diligence shall include a rental payment which is postmarked by the U.S. Postal Service, common carrier, or their equivalent (not including private postal meters) on or before the lease anniversary date or, if the designated Service office is closed on the anniversary date, postmarked on the next day the Service office is open to the public); and" and

B. Amending paragraph (a)(3) by adding at the end thereof the sentence "If a terminated lease becomes productive prior to the time the lease is reinstated, all required royalty that has accrued shall be paid to the Service.

§3108.2-4 [Amended]

48. Section 3108.2-4(a) is amended by removing from where it appears in the first sentence thereof the word "validy" and replacing it with the word "validly".

§ 3108.4 [Amended]

49. Section 3108.4 is amended by removing the last sentence thereof in its entirety.

50. A new § 3108.5 is added to read:

§ 3108.5 Waiver of suspension of lease rights.

If, during any proceeding with respect to a violation of any provisions of the regulations in Groups 3000 and 3100 of this title or the act, a party thereto files a waiver of his/her rights under the lease to drill or to assign his/her lease interests, or if such rights are suspended by order of the Secretary pending a decision, payments of rentals and the running of time against the term of the lease involved shall be suspended as of the first day of the month following the filing of the waiver or the Secretary's suspension until the first day of the month following the final decision in the proceeding or the revocation of the waiver or suspension.

51. Section 3109.1-2 is revised to read:

§ 3109.1-2 Application.

No approved form is required for an application to lease lands in a right-of-way. Applications shall be filed in the proper BLM office. Such applications shall be filed by the owner of the right-of-way or by his/her transferee and be accompanied by a nonrefundable filing fee of $75, and if filed by a transferee, by a duly executed transfer of the right to

lease. The application shall detail the facts as to the ownership of the right-of-way, and of the transfer if the application is filed by a transferee; the development of oil or gas in adjacent or nearby lands, the location and depth of the wells, the production and the probability of drainage of the deposits in the right-of-way. A description by metes and bounds of the right-of-way is not required by each legal subdivision through which a portion of the right-of-way desired to be leased extends shall be described.

§ 3109.2 [Amended]

52. Section 3109.2 is amended by:

A. Amending paragraph (c)(1) by removing from where it appears the phrase "map, 8360–80013A, revised December 1979.", and replacing it with the phrase "map, 8360–80013B, revised February 1986."; and

B. Amending paragraph (d)(1)(ii) by removing from where it appears the phrase "and all lands within any developed and/or concentrated public use area or other area of outstanding recreational significance as designated by the Superintendent on the map (NRA–L.M. 2291A, dated July 1986)" and replacing it with the phrase "and all lands outside of resource utilization zones as designated by the Superintendent on the map (602–2291B, dated October 1987)".

PART 3130—[AMENDED]

53. The authority citation for Part 3130 is revised to read:

Authority. The Department of the Interior Appropriations Act, Fiscal Year 1981 (42 U.S.C. 6504 *et seq.*), 43 U.S.C. 1701 et seq.

§ 3130.0–5 [Amended]

54. Section 3130.0–5 is amended by:

A. Removing paragraph (e) in its entirety; and

B. Redesignating paragraphs (f) and (g) as paragraphs (e) and (f), respectively.

§ 3130.3 [Amended]

55. Section 3130.3 is amended by removing from where it appears the phrase "Director, U.S. Geological Survey," and replacing it with the phrase "authorized officer".

§ 3130.5 [Amended]

56. Section 3130.5 is amended by removing from where it appears the citation "§ 3102.1–2" and replacing it with the citation "§ 3108.4".

§ 3131.2 [Amended]

57. Section 3131.2 is amended by:

A. Amending paragraph (a) by removing from where it appears the phrase "Management, with a copy to the Regional Conservation Manager, U.S. Geological Survey." and replacing it with the word "Management."; and

B. Amending paragraph (b) by removing from where it appears the phrase "shall, in consultation with the Regional Conservation Manager," and replacing it with the word "shall".

§ 3132.3 [Amended]

58. Section 3132.3 is amended by:

A. Amending paragraph (a) by removing from where it appears the phrase "filing charges and fees" and replacing it with the phrase "and filing fees", and by removing from where it appears the phrase "Bureau of Land Management" and replacing it with the phrase "Department of the Interior, Bureau of Land Management"; and

B. Removing from where it appears in paragraph (b) the phrase "U.S. Geological Survey" and replacing it with the phrase "Department of the Interior, Minerals Management Service".

§ 3133.1 [Amended]

59. Section 3133.1(c) is amended by removing the phrase "in any year" and relacing it with the phrase "in any year prior to discovery of oil or gas on the lease".

§ 3133.2 [Amended]

60. Section 3133.2 is amended by removing from where it appears near the end of the section the misspelled word "royality" and replacing it with the correct word "royalty."

§ 3133.2–1 [Amended]

61. Section 3133.2–1 is amended by removing from where it appears near the beginning of the section the misspelled word "leasee" and replacing it with the correct word "lessee."

§ 3134.1 [Amended]

62. Section 3134.1 is amended by:

A. Amending paragraph (a) by removing from where it appears the phrase "corporate surety bond" and replacing it with the phrase "surety or personal bond in accordance with the provisions of § 3104.1 of this title", and by removing the period at the end of the paragraph and adding the phrase ", or maintains or furnishes a nationwide bond as set forth in § 3104.3(b) of this title and furnishes a rider thereto sufficient to bring total coverage to $300,000 to cover all oil and gas leases held within NPR–A.";

B. Revising paragraph (b) to read:

(b) A bond in the sum of $100,000 or $300,000, or a nationwide bond as provided in § 3104.3(b) of this title with a rider thereto sufficient to bring total coverage to $300,000 to cover all oil and gas leases within NPR–A, may be provided by an operating rights owner (sublessee) or operator in lieu of a bond furnished by the lessee, and shall assume the responsibilities and obligations of the lessee for the entire leasehold in the same manner and to the extent as though he/she were the lessee.

C. Amending paragraph (c) by removing the phrase "$100,000 lease bond or a $300,000 NPR–A-wide";

D. Revising paragraph (d) to read:

(d) A new bond in the amount previously held or a larger amount as determined by the authorized officer shall be posted within 6 months or such shorter period as the authorized officer may direct after a default. In lieu thereof, separate or substitute bonds for each lease covered by the prior bond may be filed.The authorized officer may cancel a lease(s) covered by a deficient bond(s), in accordance with § 3136.3 of this title. Where a bond is furnished by an operator, suit may be brought thereon without joining the lessee when such lessee is not a party to the bond.

and

E. Revising paragraph (e) to read:

(e) Except as provided in this subpart, the bonds required for NPR–A leases are in addition to any other bonds the successful bidder may have filed or be required to file under §§ 3104.2, 3104.3(a) and 3154.1 and subparts 3206 and 3209 of this title.

§ 3134.1–1 [Amended]

63. Section 3134.1–1 is amended by removing from where it appears the phrase "lessee shall" and replacing it with the phrase "lessee, operating rights owner (sublessee), or operator shall".

§ 3134.1–2 [Amended]

64. Section 3134.1–2 is amended by redesignating the existing text as paragraph (a), by removing from where it appears therein the phrase "the lessee to supply" and replacing it with the phrase "the bonded party to supply", and by adding a new paragraph (b) to read:

(b) The holders of any oil and gas lease bond for a lease on the NPR–A shall be permitted to obtain a rider to include the coverage of oil and gas geophysical operations within the boundaries of NPR–A.

65. The title of Subpart 3135 is revised to read:

Subpart 3135—Transfers, Extensions and Consolidations

66. Section 3135.1 is revised to read:

§ 3135.1 Transfers and extensions, general.

67. Section 3135.1–1 is amended by:

A. Revising the title to read:

§ 3135.1–1 Transfers.

B. Amending paragraph (a) by removing from where it appears the word "assign" and replacing it with the word "transfer";

C. Amending paragraph (b) by removing from where it appears the word "assignment" and replacing it with the word "transfer";

D. Amending paragraph (c) by removing from where it appears the phrase "assignor shall be liable for" and replacing it with the phrase "transferor shall continue to be responsible for" and by removing from where it appears at the end of the paragraph the word "assignment" and replacing it with the word "transfer";

E. Amending paragraph (d) by removing from where it appears the phrase "assignor shall be liable for" and replacing it with the phrase "transferee shall be responsible for", and by removing from where it appears the phrase "of an assignment," and replacing it with the phrase "a transfer,"; and

F. Adding new paragraphs (e) and (f) to read:

(e) When a transfer of operating rights (sublease) is approved, the sublessee is responsible for all obligations under the rights transferred to the sublessee.

(f) Transfers are approved for administrative purposes only. Approval does not warrant or certify that either party to a transfer holds legal or equitable title to a lease.

§ 3135.1–2 [Amended]

68. Section 3135.1–2 is amended by:

A. Amending paragraph (b) by removing from where it appears therein the word "assignment" and replacing it with the word "transfer"; and

B. Revising paragraph (c) to read:

(c) Where a transfer of record title creates separate leases, a bond shall be furnished covering the transferred lands in the amount prescribed in § 3134.1 of this title. Where a transfer does not create separate leases, the transferee, if the transfer so provides and the surety consents, may become co-principal on the bond with the transferor.

69. Section 3135.1–3 is revised to read:

§ 3135.1–3 Separating filing for transfers.

A separate instrument of transfer shall be filed for each lease on a form approved by the Director or an exact reproduction of the front and back of such form. Any earlier editions of the current form are deemed obsolete and are unacceptable for filing. When transfers to the same person, association or corporation, involving more than 1 lease are filed at the same time for approval, 1 request for approval and 1 showing as to the qualifications of the transferee shall be sufficient.

70. Section 3135.1–4 is amended by:

A. Revising the title to read:

§ 3135.1–4 Effect of transfer of a tract.

B. Amending paragraph (a) by removing from where it appears in the first sentence the phrase "an assignment" and replacing it with the phrase "a transfer", by removing from where it appears in the first sentence the word "assigned" and replacing it with the word "transferred" and by removing from where it appears at the beginning of the second sentence the word "Assignment" and replacing it with the word "Transfers".

§ 3136.1 [Amended]

71. Section 3136.1 is amended by removing from where it appears at the beginning of the fourth sentence the phrase "Are linquishment", and replacing it with the correct phrase "A relinquishment", and by removing from where it appears at the end of the section the phrase "Director, U.S. Geological Survey" and replacing it with the phrase "authorized officer".

72. A new Part 3150 is added to read:

PART 3150—ONSHORE OIL AND GAS GEOPHYSICAL EXPLORATION

Subpart 3150—Onshore Oil and Gas Geophysical Exploration; General

Sec.
3150.0–1 Purpose.
3150.0–3 Authority.
3150.0–5 Definitions.
3150.1 Suspension, revocation or cancellation.

Subpart 3151—Exploration Outside of Alaska

Sec.
3151.1 Notice of intent to conduct oil and gas geophysical exploration operations.
3151.2 Notice of completion of operations.

Subpart 3152—Exploration in Alaska

Sec.
3152.1 Application for oil and gas geophysical exploration permit.
3152.2 Action on application.
3152.3 Renewal of exploration permit.
3152.4 Relinquishment of exploration permit.
3152.5 Modification of exploration permit.
3152.6 Collection and submission of data.
3152.7 Completion of operations.

Subpart 3153—Exploration of Lands Under the Jurisdiction of the Department of Defense

Sec.
3153.1 Geophysical permit requirements.

Subpart 3154—Bond Requirements

Sec.
3154.1 Types of bonds.
3154.2 Additional bonding.
3154.3 Bond cancellation or termination of liability.

Authority: The Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101 et seq.), the Independent Offices Appropriations Act of 1952 (31 U.S.C. 483a), the Naval Petroleum Reserves Production Act of 1976 (42 U.S.C. 6504), and the Department of the Interior Appropriations Act, Fiscal Year 1981 (42 U.S.C. 6508).

Subpart 3150—Onshore Oil and Gas Geophysical Exploration; General

§ 3150.0–1 Purpose.

The purpose of this part is to establish procedures for conducting oil and gas geophysical exploration operations when authorization for such operations is required from the Bureau of Land Management. Geophysical exploration on public lands, the surface of which is administered by the Bureau, requires Bureau approval. The procedures in this part also apply to geophysical exploration conducted under the rights granted by any Federal oil and gas lease unless the surface is administered by the U.S. Forest Service. However, a lessee may elect to conduct exploration operations outside of the rights granted by the lease, in which case authorization from the surface managing agency or surface owner may be required. At the request of any other surface managing agency, the procedures in this part may be applied on a case-by-case basis to unleased public lands administered by such agency. The procedures of this part do not apply to:

(a) Casual use activities;

(b) Operations conducted on private surface overlying public lands unless such operations are conducted by a lessee under the rights granted by the Federal oil and gas lease; and

(c) Exploration operations conducted in the Arctic National Wildlife Refuge in

accordance with section 1002 of the Alaska National Interest Lands Conservation Act (See 50 CFR Part 37).

§ 3150.0-3 Authority.

The Mineral Leasing Act of 1920, as amended and supplemented, (30 U.S.C. 181 et seq.), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351-359), the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101 et seq.), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), the Independent Offices Appropriations Act of 1952 (31 U.S.C. 483a), the Naval Petroleum Reserves Production Act of 1976 (42 U.S.C. 6504) and the Department of the Interior Appropriations Act, Fiscal Year 1981 (42 U.S.C. 6508).

§ 3150.0-5 Definitions.

As used in this part, the term:

(a) "Oil and gas geophysical exploration" means activity relating to the search for evidence of oil and gas which requires the physical presence upon the lands and which may result in damage to the lands or the resources located thereon. It includes, but is not limited to, geophysical operations, construction of roads and trails and cross-country transit of vehicles over such lands. It does not include core drilling for subsurface geologic information or drilling for oil and gas; these activities shall be authorized only by the issuance of an oil and gas lease and the approval of an Application for a Permit to Drill. The regulations in this part, however, are not intended to prevent drilling operations necessary for placing explosive charges, where permissible, for seismic exploration.

(b) "Casual use" means activities that involve practices which do not ordinarily lead to any appreciable disturbance or damage to lands, resources and improvements. For example, activities which do not involve use of heavy equipment or explosives and which do not involve vehicular movement and except over established roads and trails are casual use.

§ 3150.1 Suspension, revocation or cancellation.

The right to conduct exploration under notices of intent and oil and gas geophysical exploration permits may be revoked or suspended, after notice, by the authorized officer and upon a final administrative finding of a violation of any term or condition of the instrument, including, but not limited to, terms and conditions requiring compliance with regulations issued under Acts applicable to the public lands and applicable State air and water quality standards or implementation plans. The Secretary may order an immediate temporary suspension of activities authorized under a permit or other use authorization prior to a hearing or final administrative finding if he/she determines that such a suspension is necessary to protect health or safety or the environment. Further, where other applicable law contains specific provisions for suspension, revocation, or cancellation of a permit or other authorization to use, occupy, or develop the public lands, the specific provisions of such law shall prevail.

Subpart 3151—Exploration Outside of Alaska

§ 3151.1 Notice of intent to conduct oil and gas geophysical exploration operations.

Parties wishing to conduct oil and gas geophysical exploration outside of the State of Alaska shall file a Notice of Intent to Conduct Oil and Gas Exploration Operations, referred to herein as a notice of intent. The notice of intent shall be filed with the District Manager of the proper BLM office on the form approved by the Director. Within 5 working days of the filing date, the authorized officer shall process the notice of intent and notify the operator of practices and procedures to be followed. If the notice of intent cannot be processed within 5 working days of the filing date, the authorized officer shall promptly notify the operator as to when processing will be completed, giving the reason for the delay. The operator shall, within 5 working days of the filing date, or such other time as may be convenient for the operator, participate in a field inspection if requested by the authorized officer. Signing of the notice of intent by the operator shall signify agreement to comply with the terms and conditions contained therein and in this part, and with all practices and procedures specified at any time by the authorized officer.

§ 3151.2 Notice of completion of operations.

Upon completion of exploration, there shall be filed with the District Manager a Notice of Completion of Oil and Gas Exploration Operations. Within 30 days after this filing, the authorized officer shall notify the party whether rehabilitation of the lands is satisfactory or whether additional rehabilitation is necessary, specifying the nature and extent of actions to be taken by the operator.

Subpart 3152—Exploration in Alaska

§ 3152.1 Application for oil and gas geophysical exploration permit.

Parties wishing to conduct oil and gas geophysical exploration operations in Alaska shall complete an application for an oil and gas geophysical exploration permit. The application shall contain the following information:

(a) The applicant's name and address;

(b) The operator's name and address;

(c) The contractor's name and address;

(d) A description of lands involved by township and range, including a map or overlays showing the lands to be entered and affected;

(e) The period of time when operations will be conducted; and

(f) A plan for conducting the exploration operations.

The application shall be submitted, along with a nonrefundable filing fee of $25 (except where the exploration operations are to be conducted on a lease held by or on behalf of the lessee), to the District Manager of the proper BLM office.

§ 3152.2 Action on application.

(a) The authorized officer shall review each application and approve or disapprove it within 90 calendar days, unless compliance with statutory requirements such as the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) delays this action. The applicant shall be notified promptly in writing of any such delay.

(b) The authorized officer shall include in each geophysical exploration permit terms and conditions deemed necessary to protect values, mineral resources, and nonmineral resources. Geophysical permits within National Petroleum Reserve—Alaska shall contain such reasonable conditions, restrictions and prohibitions as the authorized officer deems appropriate to mitigate adverse effects upon the surface resources of the Reserve and to satisfy the requirement of section 104(b) of the Naval Petroleum Reserves Production Act of 1976 (42 U.S.C. 6504) (See part 3130 for stipulations relating to the National Petroleum Reserve—Alaska).

(c) An exploration permit shall become effective on the date specified by the authorized officer and shall expire 1 year thereafter.

(d) For lands subject to section 1008 of the Alaska National Interest Lands Conservation Act, exploration shall be authorized only upon a determination that such activities can be conducted in a manner which is consistent with the

purposes for which the affected area is managed under applicable law.

§ 3152.3 Renewal of exploration permit.

Upon application by the permittee and payment of a nonrefundable filing fee of $25 (except where the exploration operations are to be conducted on a leasehold by or on behalf of the lessee), an exploration permit may be renewed for a period not to exceed 1 year.

§ 3152.4 Relinquishment of exploration permit.

Subject to the continued obligations of the permittee and the surety to comply with the terms and conditions of the exploration permit and the regulations, the permittee may relinquish an exploration permit for all or any portion of the lands covered by it. Such relinquishment shall be filed with the District Manager of the proper BLM office.

§ 3152.5 Modification of exploration permit.

(a) A permittee may request, and the authorized officer may approve a modification of an exploration permit.

(b) The authorized officer may, after consultation with the permittee, require modifications determined necessary.

§ 3152.6 Collection and submission of data.

(a) The permittee shall submit to the authorized officer all data and information obtained in carrying out the exploration plan.

(b) The Bureau shall not release such data and information and any processed, analyzed and interpreted material until such time as disclosure would not adversely affect, in the opinion of the authorized officer, the competitive position of the permittee.

§ 3152.7 Completion of operations.

(a) The permittee shall submit to the authorized officer a completion report within 30 days of completion of all operations under the permit. The completion report shall contain the following:

(a) A description of all work performed;

(2) Charts, maps or plats depicting the areas and blocks in which the exploration was conducted and specifically identifying the lines of geophysical traverses and any roads constructed;

(3) The dates on which the actual exploration was conducted;

(4) Such other information about the exploration operations as may be specified by the authorized officer in the permit; and

(5) A statement that all terms and conditions have been complied with or that corrective measures shall be taken to rehabilitate the lands or other resources.

(b) Within 90 days after the authorized officer receives a completion report from the permittee that exploration has been completed or after the expiration of the permit, whichever occurs first, the authorized officer shall notify the permittee of the specific nature and extent of any additional measures required to rectify any damage to the lands and resources.

Subpart 3153—Exploration of Lands Under the Jurisdiction of the Department of Defense

§ 3153.1 Geophysical permit requirements.

Except in unusual circumstances, permits for geophysical exploration on unleased lands under the jurisdiction of the Department of Defense shall be issued by the appropriate agency of that Department. In the event an agency of the Department of Defense refers an application for exploration to the Bureau for issuance, the provisions of Subpart 3152 of this title shall apply. Geophysical exploration on lands under the jurisdiction of the Department of Defense shall be authorized only with the consent of, and subject to such terms and conditions as may be required by, the Department of Defense.

Subpart 3154—Bond Requirements

§ 3154.1 Types of bonds.

Prior to each planned exploration, the party(s) filing the notice of intent or application for a permit shall file with the authorized officer a bond as described in § 3104.1 of this title in the amount of at least $5,000, conditioned upon full and faithful compliance with the terms and conditions of this subpart and the notice of intent or permit. In lieu thereof, the party(s) may file a statewide bond in the amount of $25,000 covering all oil and gas exploration operations in the same State or a nationwide bond in the amount of $50,000 covering all oil and gas exploration operations in the nation. Holders of individual, statewide or nationwide oil and gas lease bonds shall be allowed to conduct exploration on their leaseholds without further bonding, and holders of statewide or nationwide lease bonds wishing to conduct exploration on lands they do not have under lease may obtain a rider to include oil and gas exploration operations under this part. Holders of nationwide or any National Petroleum Reserve-Alaska oil and gas lease bonds shall be permitted to obtain a rider to include the coverage of oil and gas exploration within the National Petroleum Reserve—Alaska under Subpart 3152 of this title.

§ 3154.2 Additional bonding.

The authorized officer may increase the amount of any bond that is required under this subpart after determining that additional coverage is needed to ensure protection of the lands or resources.

§ 3154.3 Bond cancellation or termination of liability.

The authorized officer shall not consent to the cancellation of the bond or the termination of liability unless and until the terms and conditions of the notice of intent or permit been met. Should the authorized officer fail to notify the party within 90 days of the filing of a notice of completion of the need for additional action by the operator to rehabilitate the lands, liability for that particular exploration operation shall automatically terminate.

PART 3160—[AMENDED]

73. Note 1 is amended by:

A. Amending the paragraph immediately following the Operating Forms table by removing from where it appears in the second sentence thereof the phrase "the lessee elects" and replacing it with the phrase "the operator elects"; and

B. Amending the paragraph entitled Other Reporting Requirements by removing from where it appears in the first sentence thereof the citation "3162.7–4" and replacing it with the citation "3162.7–5"; and by removing from where it appears in the second sentence thereof the phrase "some lessees to either" and replacing it with the phrase "some operators to either".

74. The authority citation for Part 3160 is revised to read as follows:

Authority: The Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.); the Act of May 21, 1930 (30 U.S.C. 301–306); the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359); the Act of March 3, 1909, as amended (25 U.S.C. 369); the Act of May 11, 1938, as amended (25 U.S.C. 396a–396q); the Act of February 28, 1891, as amended (25 U.S.C. 397); the Act of May 29, 1924 (25 U.S.C. 398); the Act of March 3, 1927 (25 U.S.C. 398a–398e); the Act of June 30, 1919, as amended (25 U.S.C. 399); R.S. § 441 (43 U.S.C. 1457), the Attorney General's Opinion of April 2, 1941 (40 Op. Atty. Gen. 41); the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.); the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.); the Department of the Interior Appropriations Act for Fiscal Year 1981 (42 U.S.C. 6508); the Alaska National Interest Lands Conservation

Act, as amended (16 U.S.C. 3101 *et seq.)*, the Combined Hydrocarbon Leasing Act of 1981 (Pub. L. 97-78), the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701); and the Indian Mineral Development Act of 1982 (25 U.S.C. 2102).

75. Section 3160.0-5 is revised to read:

§ 3160.0-5 Definitions.

As used in this part, the term:

(a) "Authorized representative" means any entity or individual authorized by the Secretary to perform duties by cooperative agreement, delegation or contract.

(b) "Avoidably lost" means the venting or flaring of produced gas without the prior authorization, approval, ratification or acceptance of the authorized officer and the loss of produced oil or gas when the authorized officer determines that such loss occurred as a result of:

(1) Negligence on the part of the operator; or

(2) The failure of the operator to take all reasonable measures to prevent and/or control the loss; or

(3) The failure of the operator to comply fully with the applicable lease terms and regulations, applicable orders and notices, or the written orders of the authorized officer; or

(4) Any combination of the foregoing.

(c) "Federal lands" means all lands and interests in lands owned by the United States which are subject to the mineral leasing laws, including mineral resources or mineral estates reserved to the United States in the conveyance of a surface or nonmineral estate.

(d) "Fresh water" means water containing not more than 1,000 ppm of total dissolved solids, provided that such water does not contain objectionable levels of any constituent that is toxic to animal, plant or acquatic life, unless otherwise specified in applicable notices or orders.

(e) "Knowingly or willfully" means a violation that constitutes the voluntary or conscious performance of an act that is prohibited or the voluntary or conscious failure to perform an act or duty that is required. It does not include performances or failures to perform that are honest mistakes or merely inadvertent. It includes, but does not require, performances or failures to perform that result from a criminal or evil intent or from a specific intent to violate the law. The knowing or willful nature of conduct may be established by plain indifference to or reckless disregard of the requirements of the law, regulations, orders, or terms of the lease. A consistent pattern of performance or failure to perform also may be sufficient to establish the knowing or willful nature of the conduct, where such consistent pattern is neither the result of honest mistakes or mere inadvertency. Conduct that is otherwise regarded as being knowing or willful is rendered neither accidental nor mitigated in character by the belief that the conduct is reasonable or legal.

(f) "Lease" means any contract, profit-share arrangement, joint venture or other agreement issued or approved by the United States under a mineral leasing law that authorizes exploration for, extraction of or removal of oil or gas.

(g) "Lease site" means any lands, including the surface of a severed mineral estate, on which exploration for, or extraction and removal of, oil or gas is authorized under a lease.

(h) "Lessee" means a person or entity holding record title in a lease issued by the United States.

(i) "Lessor" means the party to a lease who holds legal or beneficial title to the mineral estate in the leased lands.

(j) "Major violation" means noncompliance that causes or threatens immediate, substantial, and adverse impacts on public health and safety, the environment, production accountability, or royalty income.

(k) "Maximum ultimate economic recovery" means the recovery of oil and gas from leased lands which a prudent operator could be expected to make from that field or reservoir given existing knowledge of reservoir and other pertinent facts and utilizing common industry practices for primary, secondary or tertiary recovery operations.

(l) "Minor violation" means noncompliance that does not rise to the level of a "major violation".

(m) "New or resumed production under section 102(b)(3) of the Federal Oil and Gas Royalty Management Act" means the date on which a well commences production, or resumes production after having been off production for more than 90 days, and is to be construed as follows:

(1) For an oil well, the date on which liquid hydrocarbons are first sold or shipped from a temporary storage facility, such as a test tank, or the date on which liquid hydrocarbons are first produced into a permanent storage facility, whichever first occurs; and

(2) For a gas well, the date on which gas is first measured through sales metering facilities or the date on which associated liquid hydrocarbons are first sold or shipped from a temporary storage facility, whichever first occurs. For purposes of this provision, a gas well shall not be considered to have been off of production unless it is incapable of production.

(n) "Notice to lessees and operators (NTL)" means a written notice issued by the authorized officer. NTL's implement the regulations in this part and operating orders, and serve as instructions on specific item(s) of importance within a State, District, or Area.

(o) "Onshore oil and gas order" means a formal numbered order issued by the Director that implements and supplements the regulations in this part.

(p) "Operating rights owner" means a person or entity holding operating rights in a lease issued by the United States. A lessee also may be an operating rights owner if the operating rights in a lease or portion thereof have not been severed from record title.

(q) "Operator" means any person or entity including but not limited to the lessee or operating rights owner, who has stated in writing to the authorized officer that it is responsible under the terms and conditions of the lease for the operations conducted on the leased lands or a portion thereof.

(r) "Paying well" means a well that is capable of producing oil or gas of sufficient value to exceed direct operating costs and the costs of lease rentals or minimum royalty.

(s) "Person" means any individual, firm, corporation, association, partnership, consortium or joint venture.

(t) "Production in paying quantities" means production from a lease of oil and/or gas of sufficient value to exceed direct operating costs and the cost of lease rentals or minimum royalties.

(u) "Superintendent" means the superintendent of an Indian Agency, or other officer authorized to act in matters of record and law with respect to oil and gas leases on restricted Indian lands.

(v) "Waste of oil or gas" means any act or failure to act by the operator that is not sanctioned by the authorized officer as necessary for proper development and production and which results in: (1) A reduction in the quantity or quality of oil and gas ultimately producible from a reservoir under prudent and proper operations; or (2) avoidable surface loss of oil or gas.

§ 3161.1 [Amended]

76. Section 3161.1(a) is amended by removing from where it appears the phrase "by, or on behalf of the lessee" and replacing it with the phrase "by the operator".

§ 3161.2 [Amended]

77. Section 3161.2 is amended by removing from where it appears the

phrase "that the operator is authorized to conduct such operations,".

Subpart 3162—[Amended]

78. The title of Subpart 3162 is revised to read:

Subpart 3162—Requirements for Operating Rights Owners and Operators

§ 3162.1 [Amended]

79. Section 3162.1 is amended by:

A. Amending paragraph (a) by removing from where it appears at the beginning of the paragraph the phrase "The lessee shall" and replacing it with the phrase "The operating rights owner or operator, as appropriate, shall";

B. Amending paragraph (b) by removing from where it appears at the beginning of the paragraph the phrase "The lessee shall" and replacing it with the phrase "The operator shall"; and

C. Amending paragraph (c) by removing from where it appears the phrase "the lessee or operator" and replacing it with the phrase "the operator".

§ 3162.2 [Amended]

80. Section 3162.2 is amended by:

A. Amending paragraph (a) by removing from where it appears at the beginning of the paragraph the phrase "The lessee shall" and replacing it with the phrase "The operating rights owner shall", and by removing from where it appears in the second sentence of the paragraph the phrase "the lessee will pay a sum determined as adequate to compensate the lessor for lessee's failure" and replacing it with the phrase "the operating rights owner shall pay a sum determined by the authorized officer as adequate to compensate the lessor for the operating rights owner's failure";

B. Amending paragraph (b) by removing from where it appears at the beginning of the paragraph the phrase "The lessee, at its" and replacing it with the phrase "The operator, at its"; and

C. Amending paragraph (c) by removing from where it appears the phrase "the lessee shall" and replacing it with the phrase "the operating rights owner shall".

81. Section 3162.3 is revised to read as follows:

§ 3162.3 Conduct of operations.

(a) Whenever a change in operator occurs, the authorized officer shall be notified promptly in writing, and the new operator shall furnish evidence of sufficient bond coverage in accordance with § 3106.6 and subpart 3104 of this title.

(b) A contractor on a leasehold shall be considered the agent of the operator for such operations with full responsibility for acting on behalf of the operator for purposes of complying with applicable laws, regulations, the lease terms, NTL's Onshore Oil and Gas Orders, and other orders and instructions of the authorized officer.

§ 3162.3-1 [Amended]

82. Section 3162.3-1 is amended by:

A. Removing from where it appears in at the beginning of paragraph (c) the phrase "The lessee shall" and replacing it with the phrase "The operator shall";

B. Removing paragraph (d)(3) in its entirety and redesignating paragraph (d)(4) as paragraph (d)(3); and

C. Adding a new paragraph (g) to read:

(g) Approval of the Application for Permit to Drill does not warrant or certify that the applicant holds legal or equitable title to the subject lease(s) which would entitle the applicant to conduct drilling operations.

§ 3162.3-2 [Amended]

83. Section 3162.3-2(a) is amended by removing from where it appears the phrase "the lessee on" and replacing it with the phrase "the operator on".

§ 3162.3-3 [Amended]

84. Section 3162.3-3 is amended by removing the phrase "the lessee shall" and replacing it with the phrase "the operator shall".

§ 3162.3-4 [Amended]

85. Section 3162.3-4 is amended by:

A. Amending paragraph (a) by removing from where it appears at the beginning of the paragraph the phrase "The lessee shall" and replacing it with the phrase "The operator shall"; and

B. Amending paragraph (c) by removing from where it appears the phrase "When justified by the lessee," and replacing it with the phrase "When justified by the operator,".

§ 3162.4-1 [Amended]

86. Section 3162.4-1 is amended by:

A. Removing from where it appears at the beginning of paragraph (a) the phrase "The lessee shall" and replacing it with the phrase "The operator shall"; and

B. Removing from where it appears in paragraph (b) the phrase "Upon request, the lessee shall" and replacing it with the phrase "Upon request, the operator shall".

§ 3162.4-2 [Amended]

87. Section 3162.4-2 is amended by:

A. Removing from where it appears in paragraph (a) the phrase "the lessee shall" and replacing it with the phrase "the operator shall"; and

B. Removing from the 2 places it appears in paragraph (b) the phrase "the lessee shall" and replacing it with the phrase "the operator shall".

§ 3162.5-1 [Amended]

88. Section 3162.5-1 is amended by:

A. Removing from the 2 places it appears in paragraph (a) the phrase "lessee shall" and replacing it with the phrase "operator shall";

B. Removing from the 2 places it appears in paragraph (b) the phrase "lessee shall" and replacing it with the phrase "operator shall";

C. Removing from the 2 places it appears in paragraph (c) the phrase "the lessee" and replacing it with the phrase "the operator"; by removing from where it appears the phrase "The lessee" and replacing it with the phrase "The operator"; and by removing from where it appears the phrase "A lessee's" and replacing it with the phrase "An operator's"; and

D. Removing from where it appears at the beginning of paragraph (e) the phrase "The lessee's liability" and replacing it with the phrase "The operator's liability";

§ 3162.5-2 [Amended]

89. Section 3162.5-2 is amended by:

A. Removing from where it appears in paragraph (a) the phrase "The lessee shall" and replacing it with the phrase "The operator shall";

B. Removing from where it appears in paragraph (b) the phrase "The lessee shall" and replacing it with the phrase "The operator shall";

C. Removing from where it appears in paragraph (c) the phrase "The lessee shall" and replacing it with the phrase "The operator shall"; and

D. Removing from the 2 places it appears in paragraph (d) the word "lessee" and replacing it with the word "operator".

§ 3162.5-3 [Amended]

90. Section 3162.5-3 is amended by removing from the 3 places it appears the word "lessee" and replacing it with the word "operator".

§ 3162.6 [Amended]

91. Section 3162.6(b) is amended by removing from where it appears the phrase "lessees shall" and replacing it with the phrase "the operator shall".

§ 3162.7-1 [Amended]

92. Section 3162.7-1 is amended by:

A. Removing from where it appears at the beginning of paragraph (a) the

phrase "The lessee shall" and replacing it with the phrase "The operator shall";

B. Removing from the 4 places it appears in paragraph (d) the word "lessee" and replacing it with the word "operator"; and

C. Removing from where it appears in paragraph (e) the phrase "the lessee shall" and replacing it with the phrase "the operator shall".

§ 3162.7–4 [Amended]

93. Section 3162.7–4 is amended by:

A. Removing from the 2 places it appears in the introductory paragraph the phrase "BLM";

B. Removing from where it appears in paragraph (b) the phrase "BLM";

C. Removing from where it appears in paragraph (e) the phrase "BLM"; and

D. Removing from where it appears in paragraph (h) the phrase "BLM".

§ 3162.8 [Amended]

94–95. Section 3162.8 is amended by:

A. Removing from where they appear in paragraph (a): the phrase "obtained from a lessee" and replacing it with the phrase "obtained from an operating rights owner or operator"; the phrase "consent of the lessee" and replacing it with the phrase "consent of the operating rights owner or operator, as appropriate,"; and the phrase "the lessee may request" and replacing it with the phrase "the operating rights owner or operator, as appropriate,";

B. Removing from where it appears in paragraph (b) the word "lessee" and replacing it with the phrase "operating rights owner or operator";

C. Removing from where it appears in paragraph (c) the phrase "a lessee under this part" and replacing it with the phrase "an operating rights owner or operator under this part"; and

D. Removing from where they appear in paragraph (d): the phrase "the lessee submits" and replacing it with the phrase "the operating rights owner or operator submits"; and the phrase "the lessee's consent" and replacing it with the phrase "the consent of the operating rights owner or operator, as appropriate".

Subpart 3163—[Amended]

96. Subpart 3163 is amended by removing the heading "Noncompliance and Assessments" and replacing it with the heading to read: "Subpart 3163—Noncompliance, Assessments, and Penalties"

§ 3163.1 [Amended]

97. Section 3163.1 is amended by:

A. Removing from the beginning of paragaph (a): the phrase "Whenever a lessee" and replacing it with the phrase "Whenever an operating rights owner or operator"; the phrase "notify the lessee" and replacing it with the phrase "notify the operating rights owner or operator, as appropriate,"; by removing from where it appears in paragraph (a)(1) the phrase "subject the lessee" and replacing it with the phrase "subject the operating rights owner or operator, as appropriate,", by removing from where it appears in paragraph (a)(2) the phrase "subject the lessee" and replacing it with the phrase "subject the operating rights owner or operator, as appropriate,", by removing from where it appears in paragraph (a)(4) the phrase "the lessee, operations that the lessee fails" and replacing it with the phrase "the operator, operations that the operator fails", by removing from where it appears the phrase "The lessee shall" and replacing it with the phrase "The operator shall", by removing from where it appears in paragraph (a)(5) the phrase "subject the lessee to lease cancellation and forfeiture under the bond." and replacing it with the phrase "subject the lease to cancellation and forfeiture under the bond.", by removing from where it appears the phrase "The lessee shall" and replacing it with the phrase "The operator shall", by removing from where it appears in paragraph (a)(6) the phrase "the lessee's noncompliance" and replacing it with the phrase "the operator's noncompliance", and by removing from the end of paragraph (a)(6) the word "lessee" and replacing it with the word "operator";

B. Removing from the 2 places it appears in paragraph (c) the phrase "per operator," and replacing it with the phrase "per operating rights owner or operator,"; and

C. Removing from where it appears in paragraph (d) the phrase "subject the lessee to" and replacing it with the phrase "subject the operating rights owner or operator, as appropriate, to".

§ 3163.2 [Amended]

98. Section 3163.2 is amended by:

A. Removing from where it appears at the beginning of paragraph (a) the phrase "Whenever a lessee fails" and replacing it with the phrase "Whenever an operating rights owner or operator, as appropriate, fails", by removing from where it appears in paragraph (a) the phrase "notify the lessee in writing" and replacing it with the phrase "notify the operating rights owner or operator, as appropriate, in writing", and by removing from where it appears in paragraph (a) the phrase "the lessee shall be liable" and replacing it with the phrase "the operating rights owner or operator, as appropriate, shall be liable";

B. Removing from where it appears in paragraph (b) the phrase "the lessee shall be liable" and replacing it with the phrase "the operating rights owner or operator, as appropriate, shall be liable";

C. Removing from the 2 places where it appears in paragraph (g)(1) the phrase "per operator" and replacing it with the phrase "per operating rights owner or operator", by removing from where it appears at the beginning of paragraph (g)(2)(i) the phrase "The lessee has" and replacing it with the phrase "The operating rights owner or operator, as appropriate, has", by removing from where it appears at the beginning of paragraph (g)(2)(ii) the phrase "The lessee has been" and replacing it with the phrase "The operating rights owner or operator, as appropriate, has been" and by removing from the 2 places it appears in paragraph (g)(2)(iii) the phrase "per operator," and replacing it with the phrase "per operating rights owner or operator,"; and

D. Removing from where it appears in paragraph (j) the phrase "maximum specific" and replacing it with the phrase "maximum specified".

§ 3163.5 [Amended]

99. Section 3163.5 is amended by:

A. Revising the title to read: "§ 3163.5 Assessments and civil penalties.";

B. Removing from where it appears at the beginning of paragraph (b) the phrase "Administrative penalties" and replacing it with the phrase "Civil penalties"; and

C. Removing from where it appears in paragraph (c) the phrase "lessee from the responsibility" and replacing it with the phrase "responsible party".

§ 3164.1 [Amended]

100. Section 3164.1(b) is amended by removing from where it appears the phrase "binding on lessees and operators" and replacing it with the phrase "binding on operating rights owners and operators, as appropriate,".

§ 3164.3 [Amended]

101. Section 3164.3(a) is amended by removing from where it appears at the beginning of the section the phrase "Lessees shall" and replacing it with the phrase "Operators shall".

§ 3165.1 [Amended]

102. Section 3165.1 is amended by:

A. Removing from where it appears in paragraph (a) the phrase "in triplicate with the authorized officer, and they shall" and replacing it with the phrase "with the authorized officer, and shall";

B. Revising paragraph (b) to read:

(b) The authorized officer shall act on applications submitted for a suspension of operations or production, or both, filed pursuant to § 3103.4–2 of this title. The application for suspension shall be filed with the authorized officer prior to the expiration date of the lease; shall be executed by all operating rights owners or, in the case of a Federal unit approved under Part 3180 of this title, by the unit operator on behalf of the committed tracts or by all operating rights owners of such tracts; and shall include a full statement of the circumstances that makes such relief necessary.

and

C. Removing from where it appears in paragrph (c) the phrase "was filed with the authorized officer" and replacing it with the phrase "was filed or the date specified by the authorized officer".

§ 3165.1–1 [Amended]

103. Section 3165.1–1 is amended by removing from where it appears the phrase "shall be filed in triplicate in the office" and replacing it with the phrase "shall be filed in the office".

§ 3165.2 [Amended]

104. Section 3165.2 is amended by removing from where it appears the phrase "the lessee's obligations" and replacing it with the phrase "the obligations".

§ 3165.3 [Amended]

105. Section 3165.3(a) is amended by removing from where it appears at the beginning of the paragraph the phrase "Whenever a lessee fails" and replacing it with the phrase "Whenever an operating rights owner or operator, as appropriate, fails", by removing from where it appears the phrase "given the lessee to remedy" and replacing it with the phrase "given the appropriate party to remedy", by removing from where it appears the phrase "to any person authorized by the lessee to conduct or supervise" and replacing it with the phrase "to any person conducting or supervising", and by removing from where it appears the phrase "or field employee shall be mailed to the lessee or the lessee's designated representative as described above", and replacing it with the phrase "or field employee or designated representative shall also be mailed to the operator", and by removing from where it appears at the end of the last sentence the phrase "mailed to the lessee of record" and replacing it with the phrase "mailed to the operating rights owner"; and

§ 3165.4 [Amended]

106. Section 3165.4 is amended by:

A. Amending paragraph (c) by removing from where it appears the phrase "an appeal shall not result" and replacing it with the phrase "any appeal filed pursuant to paragraphs (a) and (b) of this section shall not result"; and

B. Amending paragraph (d) by removing from where it appears the phrase "in the event the lessee has failed" and replacing it with the phrase "in the event the operator has failed".

PART 3180—[AMENDED]

107. The authority citation for Part 3180 is revised to read:

Authority: Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181, 189, 226(e), 226(m)).

§§ 3183.3–1, 3183.4, 3183.5 and 3183.6 [Redesignated as §§ 3183.4, 3183.5, 3183.6 and 3183.7 respectively]

108. Sections 3183.3–1, 3183.4, 3183.5 and 3183.6 are redesignated as §§ 3183.4, 3183.5, 3183.6 and 3183.7, respectively.

109. Section 3183.4, previously § 3183.3–1, is revised to read:

§ 3183.4 Approval of executed agreement.

(a) A unit agreement shall be approved by the authorized officer upon a determination that such agreement is necessary or advisable in the public interest and is for the purpose of more properly conserving natural resources. Such approval shall be incorporated in a Certification-Determination document appended to the agreement (§ 3186.1 of this title for example). No such agreement shall be approved unless the parties signatory to the agreement hold sufficient interests in the unit area to provide reasonably effective control of operations.

(b) The public interest requirement of an approved unit agreement for unproven areas shall be satisfied only if the unit operator commences actual drilling operations and thereafter diligently prosecutes such operations in accordance with the terms of said agreement. If an application is received for voluntary termination of a unit agreement for an unproven area during its fixed term or such an agreement automatically expires at the end of its fixed term without the public interest requirement having been satisfied, the approval of that agreement by the authorized officer and lease segregations and extensions under § 3107.3–2 of this title shall be invalid, and no Federal lease shall be eligible for extensions under § 3107.4 of this title.

(c) Any modification of an approved agreement shall require the prior approval of the authorized officer.

§ 3186.1 [Amended]

110. Section 3186.1 is amended by:

A. Amending Section 9 by revising the last paragraph thereof to read:

Until the establishment of a participaint area, the failure to commence a well subsequent to the drilling of the initial obligation well, or in the case of multiple well requirements, if specified, subsequent to the drilling of those multiple wells, as provided for in this (these) section(s), within the time allowed including any extension of time granted by the AO, shall cause this agreement to terminate automatically. Upon failure to continue drilling diligently any well other than the obligation well(s) commenced hereunder, the AO may, after 15 days notice to the Unit Operator, declare this unit agreement terminated. Failure to commence drilling the initial obligation well, or the first of multiple obligation wells, on time and to drill it diligently shall result in the unit agreement approval being declared invalid *ab initio* by the AO. In the case of multiple well requirements, failure to commence drilling the required multiple wells beyond the first well, and to drill them diligently, may result in the unit agreement approval being declared invalid *ab initio* by the AO;

B. Amending Section 13 by removing from the beginning of the first paragraph the phrase "Any party hereto owning or controlling the working interest in any unitized land having thereon a regular well location may" and replacing it with the phrase "Any operator may", by removing from the first paragraph the phrase "drill a well to test" and replacing it with the phrase "drill a well on the unitized land to test", by removing from the second paragraph the phrase "by a working interest owner results in production" and replacing it with the phrase "by a non-unit operator results in production", and by removing from the third paragraph from where it appears the phrase "by a working interest owner that obtains" and replacing it with the phrase "by a non-unit operator that obtains";

C. Amending Section 14 by removing from where it appears in the first paragraph the phrase "or the working interest owner in case of the operation of a well by a working interest owner as herein provided" and replacing it with the phrase "or the non-unit operator in the case of the operation of a well by a non-unit operator as herein provided", by removing the phrase "be made by working interest owners responsible" and replacing it with the phrase "be made by an operator responsible", and

by removing the phrase "to relieve the lessees of any land" and replacing it with the phrase "to relieve the responsible parties of any land";

D. Amending Section 15 by removing from where it appears in the first paragraph the phrase "paid by appropriate working interest owners under existing contracts, laws, and regulations, provided that nothing herein contained shall operate to relieve the lessees of any land from their respective lease obligations" and replacing it with the phrase "paid by the appropriate parties under existing contracts, laws, and regulations, provided that nothing herein contained shall operate to relieve the responsible parties of the land from their respective obligations";

E. Amending Section 18(g) by removing from where it appears in the first paragraph the phrase "sec. 17 (j)" and replacing it with the phrase "sec. 17(m)", by removing the phrase "(30 U.S.C. 226(j))" and replacing it with the phrase "(30 U.S.C. 226(m))", and by adding at the end of the second paragraph a new sentence to read: "If public interest requirement is not satisfied, the segregation of a lease and/or extension of a lease pursuant to 43 CFR 3107.3–2 and 43 CFR 3107.4, respectively, shall not be effective.";

F. Amending Section 20 by revising the last sentence of the section to read: "If the public interest requirement is not satisfied, the approval of this unit by the AO shall be invalid."; and

G. Amending the portion entitled "Certification—Determination" by adding at the end of paragraph A a new sentence to read: "This approval shall be invalid *ab initio* if the public interest requirement under § 3183.4(b) of this title is not met."

PART 3200—[AMENDED]

111. The authority citation for Part 3200 is revised to read:

Authority: The Geothermal Steam Act of 1970, as amended (30 U.S.C. 1001–1025).

§ 3200.0–3 [Amended]

112. Section 3200.0–3 is amended by removing from where it appears the phrase "the Geothermal Steam Act of 1970" and replacing it with the phrase "the Geothermal Steam Act of 1970, as amended.

§ 3200.0–5 [Amended]

113. Section 3200.0–5 is amended by:

A. Revising paragraph (b) to read:

(b) "Secretary" means the Secretary of the Interior.

B. Revising paragraph (e) to read:

(e) "Party in interest" means a party who is or will be vested with any interest under the lease as defined in paragraph (f) of this section. No one is a sole party in interest with respect to an application, offer, competitive bid or lease in which any other party has an interest in such lease.

C. Revising paragraph (f) to read:

(f) "interest" means any interest whatever in a geothermal lease, including, but not limited to: (1) A record title interest; (2) a working interest; (3) an operating right; (4) an overriding royalty interest or other similar fiduciary payments or arrangements; or (5) options. "Interest" does not include stock ownership, stockholding or stock control in a lease application or offer or in a bid, except for purposes of acreage limitations in § 3201.2 of this title and qualifications of leases in Subpart 3202 of this title.

D. Revising paragraph (g) to read:

(g) "Director" means the Director of the Bureau of Land Management.

E. Amending paragraph (k), by removing paragraphs (k)(1) through (k)(3) in their entirety; and

F. Adding new paragraphs (m) through (w) to read:

(m) "Authorized officer" means any employee of the Bureau of Land Management authorized to perform the duties described in Group 3200.

(n) "Proper BLM office" means the Bureau of Land Management office having jurisdiction over the lands subject to the regulations in Group 3200.

(o) "Anniversary date" means the same day and month in succeeding years as that on which the lease became effective.

(p) "Surface managing agency" means any Federal agency outside of the Department of the Interior which has jurisdiction over the surface overlying Federally-owned minerals.

(q) "Bureau" means the Bureau of Land Management.

(r) "Service" means the Minerals Management Service.

(s) "Transfer" means any conveyance of an interest in a lease by assignment, sublease or otherwise. This definition includes the terms: "assignment" which means a transfer of all or a portion of the lessee's record title interest in a leasee; and "sublease" which means a transfer of a non-record title interest in a lease, i.e., a transfer of operating rights is normally a sublease and a sublease is a subsidiary arrangement between the lessee (sublessor) and the sublessee, but a sublease does not include a transfer of a purely financial interest, such as overriding royalty interest or payment out of production, nor does it affect the relationship imposed by a lease between the lessee(s) and the United States.

(t) "Lessee" means a person or entity holding record title in a lease issued by the United States.

(u) "Operating rights owner" means a person or entity holding operating rights in a lease issued by the United States. A lessee also may be an operating rights owner if the operating rights in a lease or a portion thereof have not been severed from record title.

(v) "Operator" means any person or entity, including but not limited to the lessee, operating rights owner, or facility operator, who has stated in writing to the authorized officer that it is responsible under the terms and conditions of the lease for the operations conducted on the leased lands or a portion thereof.

(w) "Public domain lands" means lands, including mineral estates, that never left the ownership of the United States, lands that were obtained by the United States in exchange for public domain lands, lands that have reverted to the ownership of the United States through the operation of the public land laws, and other lands specifically identified by the Congress as part of the public domain.

§ 3200.0–6 and 3200.0–7 [Removed]

114. Sections 3200.0–6 and 3200.0–7 are removed in their entirety.

§ 3200.0–8 [Redesignated as § 3200.0–6]

115. Section 3200.0–8 is redesignated as § 3200.0–6 and paragraph (a) thereof is amended by removing the third sentence thereof in its entirety and by removing from the end thereof the word "chapter" and replacing it with the word "title".

116. A new § 3200.1 is added to read:

§ 3200.1 Competitive and noncompetitive leasing areas.

The authorized officer shall determine the boundaries of known geothermal resource areas. All lands within such boundaries shall only be leased competitively to the highest qualified bidder in accordance with Part 3220 of this title. All other lands shall be leased noncompetitively, if at all, to the first qualified offeror in accordance with Part 3210 of this title.

(a) In determining whether the geology of an area is of such a nature that the area should be designated as a KGRA, the authorized officer shall use such geologic and technical evidence as he/she deems appropriate, including the following:

(1) The existence of siliceous sinter and natural geysers;

(2) The temperature of fumaroles, thermal springs and mud volcanoes;

(3) The SiO_2 content of spring water;

(4) The Na/K ratio in spring waters or hot-water systems;

(5) The existence of volcanoes and calderas of late Tertiary or Quaternary age;

(6) Conductive heat flows and geothermal gradient;

(7) The porosity and the permeability of a potential reservoir;

(8) The results of electrical resistivity surveys;

(9) The results of magnetic, gravity and airborne infrared geophysical surveys; and

(10) The information obtained through other geophysical methods, such as microseismic, seismic ground noise, electromagnetic and telluric surveys if such methods prove to have significant use in evaluation.

(b) For purposes of KGRA classification, a "discovery" or "discoveries" shall be considered to be any well deemed by the authorized officer to be capable of producing geothermal resources in commercial quantities. Where the geological structure is not known, "nearby" shall be considered to be 5 miles or less from any such discovery. Lands nearby a discovery shall be classified as KGRA unless it is determined that the lands are on a different geological structure from the discovery. Where the authorized officer has determined the extent of a structure on which a discovery has been made, all lands in that structural area contributing geothermal resources to that discovery shall be deemed a KGRA regardless of the distance from the discovery.

(c) "Competitive interest" shall exist in the entire area covered by an application for a geothermal lease if at least one-half of the lands covered by application are also covered by another application which was filed during the same application filing period, whether or not that other application is subsequently withdrawn or rejected. Competitive interest shall not be deemed to exist in the entire area covered by an application because of an overlapping application, if less than one-half of the lands subject to the first application are covered by any other single application filed during the same application filing period; however, some of the lands subject to the first application may be determined to be within a KGRA pursuant to the first sentence of this paragraph.

117. A new § 3200.2 is added to read:

§ 3200.2 Management of Federal minerals from reserved mineral estates.

Where nonmineral public land disposal statutes provided that in conveyances of title all or certain minerals shall be reserved to the United States together with the right to prospect for, mine and remove the minerals under applicable law and regulations as the Secretary may prescribe, the lease or sale, and administration and management of use of such minerals shall be accomplished under the regulations of Group 3200 of this title. Such mineral estate include, but are not limited to, those that have been or will be reserved under the authorities of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*), the Small Tract Act of June 1, 1938, as amended (43 U.S.C. 682(b)) and the Federal Land Policy and Management of 1976 43 U.S.C. 1701 *et seq.*).

§ 3201.1-1 [Amended]

118. Section 3201.1-1 is amended by:

A. Adding a new paragraph (a) to read:

(a) The Secretary may issue a geothermal lease when he/she determines such issuance would be in the public interest;

and

B. The existing paragraph of the section is designated as paragraph (b) by inserting the figure "(b)" at the beginning of the paragraph, and the figures (a), (b), and (c) are changed to (1), (2), and (3).

§ 3201.1-2 [Amended]

119. Section 3201.1-2(b)(2) is amended by removing from where it appears the word "chapter" and replacing it with the word "title".

§ 3201.1-4 [Amended]

120. Section 3201.1-4 is amended by removing the phrase "Federal Power Commission" from the title and the place it appears in the body of the section and replacing it with the phrase "Federal Energy Regulatory Commission".

§ 3202.2 [Amended]

121. Section 3202.2 is amended by revising the first sentence of the section to read: "Submission of an executed lease application or offer, competitive bid or request for approval of a transfer of record title or of operating rights (sublease) constitutes certification of compliance with the regulations of this group and the Act."

§ 3202.2-2 [Removed]

122. Section 3202.2-2 is removed in its entirety.

123. Section 3202.2-3 is redesignated as § 3202.2-2 and revised to read:

§ 3202.2-2 Attorney-in-fact/agent.

An attorney-in-fact or an agent may execute and file an application, offer, competitive bid or transfer of record title or of operating rights (sublease), request for approval of a transfer or other lease-related document.

§ 3202.2-4 [Removed]

124. Section 3202.2-4 is removed in its entirety.

§ 3202.2-5 [Redesignated as § 3202.2-3]

125. Section 3202.2-5 is redesignated as § 3202.2-3 and is amended by removing the last two sentences thereof and replacing them with the sentence to read: "All interested parties may be required to furnish evidence of their qualifications upon the written request of the authorized officer."

§ 3202.2-6 [Redesignated as § 3202.2-4]

126. Section 3202.2-6 is redesignated as § 3202.2-4 and is amended by removing in its entirety all language following the first two sentences of the section.

127. Section 3203.1-1 is revised to read:

§ 3203.1-1 Dating of leases.

All geothermal leases shall be considered issued when signed by the authorized officer. Geothermal leases, except future interest leases issued under Subpart 3207 of this title, shall be effective as to the first day of the month following the date the leases are issued. A lease may be made effective on the first day of the month within which it is issued if a written request is made prior to the date of signature of the authorized officer. A renewal lease shall be dated from the termination of the original lease.

§ 3203.1-3 [Amended]

128. Section 3203.1-3 is amended by removing from the beginning of the section the designation "(a)".

§ 3203.1-4 [Amended]

129. Section 3203.1-4 is amended by removing from where it appears in paragraph (d) the citation "30 CFR 270.17" and replacing it with the citation "§ 3205.3-8 of this title".

§ 3203.2 [Amended]

130. Section 3203.2 is amended by:

A. Amending paragraph (b) by removing from where it appears at the end of the second sentence the phrase ", or as provided for in Part 3230 of this

chapter with respect to 'conversion rights' "; and

B. Amending paragraph (d) by removing from where is appears in the first sentence thereof the word "will" and replacing it with the word "shall", by removing from where it appears in the first sentence thereof the word "chapter" and replacing it with the word "title" and by removing from where it appears in the third sentence thereof the word "will" and replacing it with the word "shall".

§ 3203.3 [Amended]

131. Section 3203.3 is amended by removing from where it appears the citation "§ 3203.2" and replacing it with the phrase "§ 3203.2 of this title".

§ 3203.5 [Amended]

132. Section 3203.5 is amended by:

A. Removing from where it appears the phrase "lessee or designated operator," and replacing it with the word "operator", and

B. Removing from the 2 places where it appears the word "supervisor" and replacing it with the phrase "authorized officer".

§ 3203.6 [Amended]

133. Section 3203.6 is amended by removing from where it appears in the introductory paragraph the citation "§ 3209.9–5(d)" and replacing it with the citation "3209.0–5", by removing from where it appears in the introductory paragraph and paragraph (a) the word "chapter" and replacing it with the word "title", by removing from where it appears in paragraphs (a) and (b) the phrase "The lessee shall" and replacing it with the phrase "The operator shall", by removing from where it appears in paragraph (a) the citation "43 CFR 3264.4" and replacing it with the citation "§ 3264.4 of this title", by removing from where it appears in paragraph (b) the citation "43 CFR 3262.4" and replacing it with the citation "§ 3262.4 of this title", and by removing from where it appears in paragraph (b), the citation "43 CFR 3262.4–2" and replacing it with the citation "§ 3262.4–2 of this title".

§ 3203.8 [Amended]

134. Section 3203.8 is amended by:

A. Amending paragraph (a) by removing from where it appears the phrase "the Supervisor" and replacing it with the phrase "the authorized officer" and by removing from where it appears the phrase "consent of any lessee affected" and replacing it with the phrase "consent of any operating rights owner affected"; and

B. Amending paragraph (b) by removing from where it appears the phrase "the lessee must drill" and replacing it with the phrase "the operating rights owner shall drill", by removing from where it appears the phrase "wells, the lessee may, with" and replacing it with the phrase "wells, the operating rights owner may, with", by removing from where it appears the phrase "the Supervisor" and replacing it with the phrase "the authorized officer", and by removing from where it appears at the end of paragraph (b) the citation "43 CFR Part 3260" and replacing it with the citation "§ 3262.3 of this title".

135. The title of Subpart 3205 is revised to read:

Subpart 3205—Fees, Rentals and Royalties

§ 3205.1–2 [Amended]

136. Section 3205.1–2(a)(1) is amended by removing from where it appears the phrase "all first-year rentals" and replacing it with the phrase "all first-year advance rentals".

137. Section 3205.2 is revised to read:

§ 3205.2 Filing fees.

(a) No filing fee is required for competitive lease applications.

(b) Applications for noncompetitive leases, including future interest leases, shall be accompanied by a nonrefundable filing fee of $75 for each application.

(c) Applications for approval of a transfer of a lease or any interest therein shall be accompanied by a nonrefundable filing fee of $50 for each separate transfer.

(d) No filing fee is required for requests or nominations for parcels to be offered for competitive sale.

§ 3205.3–1 [Amended]

138. Section 3205.3–1 is amended by revising the first sentence thereof to read: "Each application shall be accompanied by payment of the first-year's advance rental of $1 per acre or fraction thereof based on the total acreage included in the application, except that no advance rental payment is required with an application for a future interest.", by removing where it appears in the second sentence thereof the phrase "first-year's rental" and replacing it with the phrase "first-year's advance rental" and by removing from where it appears in the last sentence thereof the phrase "of the application" and replacing it with the phrase "or the application".

§ 3205.3–2 [Amended]

139. Section 3205.3–2 is amended by:

A. Amending paragraph (a) by removing from where it appears the phrase "proper BLM office" and replacing it with the phrase "designated Service office" and by removing from where it appears the word "chapter" and replacing it with the word "title";

B. Amending paragraph (c) by removing from where it appears the word "chatper" and replacing it with the word "title"; and

C. Revising paragraph (d) to read:

"(d) If the payment is due on a day in which the designated Service office is closed, payment received on the next official working day shall be deemed to be made on time."

§ 3205.3–7 [Amended]

140. Section 3205.3–7(b) is amended by revising the introductory paragraph to read:

"(b) An application hereunder shall be filed with the authorized officer and shall:".

141. Section 3205.3–8 is revised to read:

§ 3205.3–8 Suspension of operations and production or suspension of operations.

(a) A suspension of all operations and production on a producing lease may, upon application by the operating rights owner, be consented to by the authorized officer, including cases where the operator is prevented from continuing production, despite the exercise of due care and diligence, by matters beyond the operator's reasonable control. Applications for suspensions of all operations and production shall be filed in the proper BLM office. Complete information showing the necessity for such relief shall be furnished.

(b) The authorized officer may, in the interest of conservation, direct the suspension of operations on any lease.

(c) The term of any lease shall be extended by adding thereto the period of the suspension, and no lease shall be deemed to expire during any suspension.

(d) A suspension shall take effect as of the time specified in the direction or assent of the authorized officer and shall last for the period specified in the order or approval, except as provided in paragraphs (f) and (g) of this section.

(e) Rental or minimum royalty payments shall be suspended during any period of suspension directed or assented to by the authorized officer beginning with the first day of the lease month in which the suspension becomes effective or, if the suspension becomes effective on any date other than the first day of a lease month, beginning with the first day of the lease month following such effective date. Rental or minimum royalty payments shall resume on the

first day of the lease month in which the suspension is terminated. Where rentals are creditable against royalties and have been paid in advance, proper credit shall be allowed on the next rental or royalty due under the terms of the lease.

(f) Where operations only or all operations and production have been suspended on a lease and the authorized officer approves resumption of operations only or all operations and production, such resumption shall be regarded as terminating the suspension, including the suspension of rental or minimum royalty payments, as provided in paragraph (e) of this section.

(g) Whenever it appears from information obtained by or furnished to the authorized officer that the interest of the lessor requires additional drilling or producing operations, he/she may, by written notice, order the beginning or resumption of such operations.

(h) The relief authorized under this section also may be obtained for any leases included within an approval unit or cooperative plan or development and operation. Unit or cooperative plan obligations shall not be suspended by relief obtained under this section but shall be suspended only in accordance with the terms and conditions of the specific unit or cooperative plan.

§ 3205.3.9 [Amended]

142. Section 3205.3–9 is amended by removing from the two places it appears the word "Supervisor" and replacing it with the phrase "authorized officer", by removing from where it appears the word "chapter" and replacing it with the word "title", by removing from where it appears in fourth, seventh and eighth sentences the word "will" and replacing it with the word "shall" and by removing from where it appears in the seventh sentence the word "must" and replacing it with the word "shall".

§ 3205.4–1 [Amended]

143. Section 3205.4–1 is amended by removing from where it appears the citation "§ 3205.3" and replacing it with the citation "§ 3205.3 of this title".

§ 3205.4–2 [Amended]

144. Section 3205.4–2 is amended by removing from where it appears the citation "Subpart 3205" and replacing it with the citation "subpart 3205 of this title" and by removing from where it appears the citation "§ 3205.3" and replacing it with the citation "§ 3205.3 of this title".

145. Sections 3206.1, 3206.1–1 and 3206.1–2 are revised to read:

§ 3206.1 Bond obligations and filing.

§ 3206.1–1 Bond obligations.

A surety or personal bond conditioned upon compliance of the terms and conditions of the entire leasehold(s) covered by the bond shall be submitted by the lessee, operating rights owner (sublessee), or operator prior to the commencement of drilling operations.

§ 3206.1–2 Filing.

A single originally executed copy of a bond on the appropriate form approved by the Director shall be filed in the proper BLM office. Nationwide bonds may be filed in any Bureau State office (See § 1821.2–1). For unit bond forms see subpart 3284 of this title.

146. Section 3206.2 is revised to read:

§ 3206.2 Lease bond.

A lease bond may be posted by a lessee, operating rights owner (sublessee), or operator, in an amount of not less than $10,000 for each lease conditioned upon compliance with all of the terms of the lease. Where 2 or more pricipals have interests in different portions of the lease, separate bonds may be posted. The operator on the ground shall be covered by a bond in his/her name as principal, or in the name of the lessee or sublessee, provided that lessee or sublessee and surety consent is provided.

§§ 3206.3 and 3206.3–1 [Removed]

147. Sections 3206.3 and 3206.3–1 are removed in their entirety.

§ 3206.3–2 [Removed]

§ 3206.3–3 [Redesignated from § 3206.3]

148. Section 3206.3–2 is removed in its entirety, and § 3206.3–3 is redesignated as § 3206.3 and revised to read as follows:

§ 3206.3 Liability.

Where a bond is furnished by an operating rights owner (sublessee) or operator, the Secretary may bring suit thereon without joining the lessee if he/she is not a party to the bond.

149. Section 3206.5 is revised to read:

§ 3206.5 Statewide bond.

In lieu of bonds required under this subpart, the lessee, operating rights owner (sublessee), or operator may furnish a bond in an amount of not less than $50,000 for full statewide coverage for all geothermal leases in the applicable State.

150. Section 3206.6 is revised to read:

§ 3206.6 Nationwide bond.

In lieu of bonds required under this subpart, the lessee, operating rights owner (sublessee), or operator may furnish a bond in an amount of not less than $150,000 for full nationwide coverage for all geothermal leases.

151. A new § 3206.9 is added to read:

§ 3206.9 Termination of period of liability.

The period of liability of any lease shall not terminate until all lease terms and conditions have been fulfilled.

152. Section 3207.2–3(c) is revised to read as follows:

§ 3207.2–3 Leasing.

* * * * *

(c) No rental or royalty shall be due to the United States prior to the vesting of the mineral rights in the United States. However, as consideration for the issuance of a noncompetitive future interest geothermal lease, the lessee shall agree that if, prior to the vesting of the mineral rights in the United States:

(1) The future interest lessee transfers all or a part of the lessee's present interests, such lessee shall file in the proper BLM office an assignment or transfer, in accordance with Subpart 3241 of this title, of the future interest lease of the same type and proportion as the transfer of the present interest; and

(2) The future interest lessee's present lease interests are relinquished, canceled, terminated, or expired, the future interest lease rights with the United States also shall cease and terminate to the same extent.

153. Section 3207.3–2(c) is revised to read as follows:

§ 3207.3–2 Leasing.

* * * * *

(c) No rental or royalty shall be due to the United States prior to the vesting of the mineral rights in the United States. However, as consideration for the issuance of a competitive future interest geothermal lease, the lessee shall agree that if, prior to the vesting of the mineral rights in the United States:

(1) The future interest lessee transfers all or a part of the lessee's present interests, such lessee shall file in the proper BLM office an assignment or transfer, in accordance with Subpart 3241 of this title, of the future interest lease of the same type and proportion as the transfer of the present interest; and

(2) The future interest lessee's present lease interests are relinquished, canceled, terminated, or expired, the future interest lease rights with the United States also shall cease and terminate to the same extent.

§ 3209.0–1 [Amended]

154. Section 3209.0–1(a) is amended by removing from where it appears the phrase "on the public land for geothermal resources" and replacing it

with the following: "unleased public lands, the surface of which is administered by the Bureau, and on lands under a Federal lease for geothermal resources by the lessee. At the request of any other surface managing agency, the procedures in this part may be applied on a case by case basis to unleased public lands administered by such agency"; and by removing the last sentence thereof in its entirety.

§ 3209.0–5 [Amended]

155. Section 3209.0–5 is amended by removing paragraph (c) in its entirety and redesignating paragraph (d) as paragraph (c).

156. Section 3209.4–1(b) is revised to read:

§ 3209.4–1 General.

* * * * *

(b) A party shall be excused from compliance with the requirements of paragraph (a) of this section if he/she possesses either a nationwide bond in the amount of not less than $50,000 covering all exploration operations, or a statewide bond in the amount of not less than $25,000 covering all exploration operations in the state in which the lands on which he/she has filed the Notice of Intent are situated, or a lease bond of not less than $10,000 furnished in accordance with § 3206.2 of this title.

PART 3210—[AMENDED]

157. The authority citation for Part 3210 is revised to read:

Authority: The Geothermal Steam Act of 1970, as amended (30 U.S.C. 1001–1025).

158. Section 3210.2–1 is revised to read:

§ 3210.2–1 Application.

An application for a lease shall be filed in an original and 2 copies in the proper BLM office on a form approved by the Director. The original form, or a copy thereof, filled in by typewriter or printed plainly in ink, manually signed in ink and dated by the offeror, or the offeror's duly authorized agent or attorney-in-fact, shall be required. Copies shall be an exact reproduction on 1 page of both sides of the approved form without additions, omissions or other changes or advertising. The application shall be submitted in a sealed envelope marked "Application for lease pursuant to 43 CFR Part 3210." The application shall include a complete and accurate description of the lands applied for, which shall include all available lands, including reserved geothermal resources, within a surveyed or protracted section, or, if the lands are neither surveyed nor protracted and are described by metes and bounds, all the lands which will be included in a section when the lands are surveyed or protracted. The description of lands in an existing lease shall be conformed to a subsequent resurvey or amended protraction survey, whichever is appropriate.

PART 3220—[AMENDED]

159. The authority citation for Part 3220 is revised to read:

Authority: The Geothermal Steam Act of 1970, as amended (30 U.S.C. 1001–1025).

160. Section 3220.2 is revised and §§ 3220.2–1 and 3220.2–2 are added to read:

§ 3220.2 Notice of lease sale.

§ 3220.2–1 Contents of notice.

The notice of lease sale shall state the time, date and place of the sale, shall include a general description of the lands offered for sale and information on where the detailed statement of the precise description and terms and conditions of the lease(s), including rental and royalty rates, as well as the form on which a bid(s) shall be submitted and where that form may be obtained. Remittances for competitive bids shall be submitted as required in the detailed statement of sale notice.

§ 3220.2–2 Detailed statement.

The detailed statement shall contain informtion on when and where to submit bids, bidding requirements, required payments, lease terms and conditions, the description of the leasing units being offered and any other information that may be helpful to the prospective bidder.

161. Section 3220.3 is revised to read:

§ 3220.3 Publication of the notice.

The notice of lease sale shall be published once a week for 3 consecutive weeks in a newspaper of general circulation in the area in which the lands are situated or in such other publications as the authorized officer may determine approriate. The successful bidder shall, prior to lease issuance, pay his/her proportionate share of the total cost of publication of the notice.

§ 3220.4 [Amended]

162. Section 3220.4(a) is amended by removing from where it appears in the second sentence the phrase ", together with proof of qualifications as required by these regulations" and by removing the last sentence thereof and adding two new sentences to read: "Execution and submission of a bid as prescribed in the detailed statement of lease sale constitutes certification of compliance with Subpart 3202 of this title. Proof of qualifications to hold a lease shall be furnished upon the written request of the authorized officer in accordance with § 3202.2 of this title."

§ 3220.5 [Amended]

163. Section 3220.5 is amended by:

A. Amending paragraph (b) by removing from where it appears at the end thereof the phrase ", except as required under Part 3230 of this chapter" and by adding to the end thereof the sentence "High bids determined to be inadequate by the authorized officer shall be rejected."

B. Redesignating paragraphs (c), (d), and (e) as paragraphs (d), (e), and (f), respectively;

C. Adding a new paragraph (c) to read as follows:

(c) If the authorized officer cannot issue a decision to accept or reject the high bid within 30 days, the high bidder shall be notified and informed in writing of the reason for the delay and when a decision is expected.

D. Revising redesignated paragraph (d) to read as follows:

(d) The right to reject any and all bids is reserved by the Secretary. If the high bid is rejected or is determined by the authorized officer to not be in compliance with the requirements set out in the detailed statement or the award notice, the bonus bid submitted with the bid shall be refunded. ; and

E. Amending redesignated paragraph (e) by revising the first sentence thereof to read: "If the lease is awarded, 3 copies of the lease shall be sent to the successful bidder who shall, within 15 days of receipt of notice, sign and return the lease forms together with payment of the balance of the bonus bid, the first year's rental and the bidder's proportionate share of the notice of lease sale pubication costs."; and

F. Amending redesignated paragraph (f) by removing from where it appears the phrase "the Secretary" and replacing it with the phrase "the authorized officer".

PART 3240—[AMENDED]

164. The authority citation for Part 3240 is revised to read:

Authority: The Geothermal Steam Act of 1970, as amended (30 U.S.C. 1001–1025).

165. The title to Subpart 3241 is revised to read:

Subpart 3241—Transfers

166. Section 3241.1 is revised to read:

§ 3241.1 Transfers, interests and qualifications.

167. Section 3241.1–1 is amended by:

A. Revising the title to read:

§ 3241.1–1 Transfers of record title.

B. Amending paragraph (a) by removing from where it appears at the beginning of the paragraph the designation "(a)", by removing from where it appears the word "will" and replacing it with the word "shall", by removing from where it appears the word "chapter" and replacing it with the word "title" and by removing from where it appears the word "Secretary" and replacing it with the phrase "authorized officer"; and

C. Removing paragraph (b) in its entirety.

D. Designating paragraphs (1), (2), and (3) as paragraphs (a), (b), and (c).

168. A new § 3241.1–2 is added to read:

§ 3241.1–2 Transfers of operating rights.

A working interest or operating right in a lease also may be transferred under this subpart.

169. Section 3241.2 is revised to read:

§ 3241.2 Requirements for filing of transfers.

170. Section 3241.2–1 is revised to read:

§ 3241.2–1 Place of filing and filing fee.

A request for approval of a transfer of a lease or interest therein shall be filed in the proper BLM office and accompanied by a nonrefundable filing fee of $50. A transfer not accompanied by the required nonrefundable filing fee shall not be accepted and shall be returned.

§ 3241.2–2 [Removed]

171. Section 3241.2–2 is removed in its entirety.

172. Section 3241.2–3 is redesignated as § 3241.2–2 and is revised to read:

§ 3241.2–2 Time of filing of transfers.

(a) A request for approval of a transfer of a lease or of an interest therein, including a transfer of operating rights (sublease), shall be filed in the proper BLM office within 90 days from the date of execution. The 90-day filing period shall begin on the date the transferor signs and dates the transfer. If the transfer is filed after the 90th day, the authorized officer may require verification that the transfer is still in force and effect.

(b) A separate transfer shall be filed in the proper BLM office for each geothermal lease involving transfers of record title or of operating rights (sublease). When transfers to the same person, association, including partnerships, or corporation, involve more than 1 geothermal lease, 1 request for approval shall be sufficient.

173. Section 3241.2–4 is redesignated as § 3241.2–3 and is revised to read:

§ 3241.2–3 Forms and number of copies required.

A current form approved by the Director or an exact reproduction of the front and back thereof shall be used for each transfer of record title or of operating rights (sublease). A transfer filed on a form not currently in use shall be acceptable, unless such form has been declared obsolete by the Director prior to the filing of the transfer. Three copies of the form, including at least 1 originally executed copy, shall be filed in the proper BLM office.

174. Section 3241.2–5 is redesignated as § 3241.2–4 and is revised to read:

§ 3241.2–4 Description of lands.

Each transfer of record title shall describe the lands involved in the same manner as the lands are described in the lease, except no land description is required when 100 percent of the entire area encompassed in a lease is conveyed.

175. Section 3241.3 is revised to read:

§ 3241.3 Bonds.

Where a transfer does not create separate leases, the transferee, if the transfer so provides, may become a co-principal on the bond with the transferor. Any transfer which does not convey the transferor's record title in all of the lands in a lease shall also be accompanied by a consent of his/her surety to remain bound under the bond as to the lease retained by said transferor, if the bond, by its terms, does not contain such consent. If a party to the transfer has previously furnished a statewide or nationwide bond, as appropriate, no additional showing by such party is necessary as to the bond requirement.

176. Section 3241.4 is revised to read:

§ 3241.4 Approval.

The request for transfer of record title or of operating rights (sublease) shall be approved upon the execution of the forms by the authorized officer. Upon approval, a transfer shall be effective as of the first day of the lease month following the date of filing of the transfer. Transfers are approved for administrative purposes only. Approval does not warrant or certify that either party to a transfer holds legal or equitable title to a lease.

177. Section 3241.5 is revised to read:

§ 3241.5 Continuing responsibility.

(a) The transferor and his/her surety shall continue to be responsible for the performance of any obligation under the lease until the transfer is approved by the authorized officer. If a transfer of record title is not approved, the obligation of the transferor and its surety to the United States shall continue as if no such transfer had been filed for approval.

(b) Upon approval, the transferee and his/her surety shall be responsible for the performance of all lease obligations notwithstanding any terms in the transfer to the contrary.

(c) When a transfer of operating rights (sublease) is approved, the sublessee is responsible for all obligations under the lease rights transferred to the sublessee.

§ 3241.7–1 [Amended]

178. Section 3241.7–1 is amended by:

A. Amending paragraph (b) by removing from where it appears the phrase "assignment or transfer, a statement must" and replacing it with the phrase "transfer, a statement shall";

B. Redesignating paragraph (d) as paragraph (c) and amending the newly redesignated paragraph (c) by removing from where it appears in the first sentence thereof the phrase "assignments by overriding royalty interests must" and replacing it with the phrase "transfers of overriding royalty interests shall", and by removing from where it appears the phrase "interests will not" and replacing it with the phrase "intersts shall not".

179. Section 3241.8 is revised to read:

§ 3241.8 Lease account status.

Unless the lease account is in good standing as to the area covered by a transfer at the time the transfer is filed, or is placed in good standing before the transfer is acted upon, the request for approval of the transfer shall be denied.

180. Section 3241.9 is revised to read:

§ 3241.9 Effect of transfer.

A transfer of record title of the complete interest in a portion of the lands in a lease shall segregate the transferred and retained portions of the lease into separate and distinct leases. A transfer of an undivided record title interest in the entire leasehold or a transfer of operating rights (sublease) shall not segregate the lease into separate or distinct leases.

§ 3242.1 [Amended]

181. Section 3242.1 is amended by removing from where it appears in the first sentence of the introductory paragraph the word "Supervisor" and

replacing it with the phrase "authorized officer", also by removing from where it appears in the introductory paragraph the word "he" and replacing it with the phrase "he/she" and by removing from where it appears in paragraph (c) the word "him" and replacing it with the phrase "him/her".

§ 3242.2-2 [Amended]

182. Section 3242.2-2 is amended by removing from where it appears the citation "§ 3242.2-1" and replacing it with the citation "§ 3242.2-1 of this title".

§ 3243.1 [Amended]

183. Section 3243.1 is amended by removing from where it appears in the second sentence thereof the word "Supervisor" and replacing it with the phrase "authorized officer" and by removing from where it appears at the end of the second sentence thereof the citation "43 CFR Part 3260" and replacing it with the citation "part 3280 of this title."

§ 3243.2 [Amended]

184. Section 3243.2 is amended by removing from where it appears in the first sentence thereof the word "supervisor" and replacing it with the phrase "authorized officer".

§ 3243.3-1 [Amended]

185. Section 3243.3-1 is amended by amending paragraph (a) by revising the first sentence thereof to read: "When separate tracts under lease cannot be independently developed and operated in conformity with an established well-spacing or well-development program, the authorized officer may approve or require lessees to enter into communitization or drilling agreements providing for the apportionment of production or royalties among the separate tracts of land comprising the drilling or spacing unit for the lease, or any portion thereof, with other lands, whether or not owned by the United States, when found in the public interest." And amending paragraphs (b) and (c) by removing from where it appears in those paragraphs the word "Supervisor" and replacing it with the phrase "authorized officer".

§ 3243.3-2 [Amended]

186. Section 3243.3-2 is amended by removing from where it appears in the second sentence the word "Supervisor" and replacing it with the phrase "authorized officer" and also by removing from where it appears in the second sentence the word "must" and replacing it with the word "shall."

§ 3243.4-1 [Amended]

187. Section 3243.4-1 is amended by:

A. Revising paragraph (a) to read:

(a) The authorized officer may, on such conditions as may be prescribed, approve operating, drilling or development contracts made by 1 or more geothermal lessees, with 1 or more persons, associations, including partnerships, or corporations whenever the authorized officer determines that such contracts are required for the conservation of natural resources or are in the best interest of the United States.

B. Amending paragraph (b) by removing from where it appears therein the word "Supervisor" and replacing it with the phrase "authorized officer"; and

C. Amending paragraph (c) by removing from where it appears therein the word "Secretary" and replacing it with the phrase "authorized officer" and also by removing from where it appears the word "will" and replacing it with the word "shall".

§ 3243.4-2 [Amended]

188. Section 3243.4-2 is amended by:

A. Amending paragraph (a) by removing from the two places it appears therein the word "must" and replacing it with the word "shall" and also by removing from where it appears therein the word "Secretary" and replacing it with the phrase "authorized officer"; and

B. Amending paragraph (b) by removing from where it appears the word "must" and replacing it with the word "shall".

§ 3244.1 [Amended]

189. Section 3244.1(a) is amended by revising the introductory text of the paragraph to read:

(a) A lease, or any legal subdivision thereof, may be surrendered by the record title holder or the holder's duly authorized agent by filing a written relinquishment in the proper BLM office. A partial relinquishment shall not reduce the remaining acreage in the lease to less than 640 acres, except where a departure is occasioned by an irregular subdivision. The minimum acreage provision may be waived by the authorized officer when it is determined that an exception is justified on the basis of exploratory and development data derived from activity on the leasehold. The relinquishment shall:

§ 3244.2-1 [Amended]

190. Section 3244.2-1 is amended by removing from where it appears in the first sentence thereof the citation "§ 3244.2-2" and replacing it with the citation "§ 3244.2-2 of this title" and by revising the second sentence thereof to read: "However, if the designated Service office is not open on the day a payment is due, payment received on the next day the designated Service office is open to the public shall be deemed timely made."

§ 3244.2-2 [Amended]

191. Section 3244.2-2 is amended by:

A. Amending paragraph (a) by removing from where it appears in the first sentence the word "paid" and replacing it with the phrase "received" and revising the third and fourth sentences thereof to read: "The designated Service office shall send a Notice of Deficiency to the lessee. The Notice shall be sent by certified mail, return receipt requested, and shall allow the lessee 15 days from the date of receipt or until the due date, whichever is later, to submit the full balance due to the designated Service office."; and

B. Amending paragraph (b)(1) by adding after the phrase "part of the lessee;" the words "(reasonable diligence shall include a rental payment that is postmarked by the U.S. Postal Service, common carrier, or their equivalent (not including private postal meters) on or before the lease anniversary date or, if the designated Service office is closed on the anniversary date, postmarked on the next day the Service office is open to the public);"

§ 3244.5 [Amended]

192. Section 3244.5 is amended by removing from where it appears the word "Supervisor" and replacing it with the phrase "authorized officer".

PART 3250—[AMENDED]

193. The authority citation for Part 3250 is revised to read:

Authority: Secs. 3 and 24, Geothermal Steam Act of 1970, as amended (30 U.S.C. 1001-1025).

§ 3250.0-3 [Amended]

194. Section 3250.0-3 is amended by removing from where it appears the word "Stream" and replacing it with the word "Steam".

195. Section 3250.1-2 is revised to read:

§ 3250.1-2 Who may hold licenses.

Licenses shall be issued only to citizens of the United States, associations of such citizens, corporations organized under the laws of the United States, any State or the District of Columbia or governmental

units, including, without limitations, municipalities.

§3250.4–1 [Amended]

196. Section 3250.4–1 is amended to remove from where it appears the citation "§ 3200.0–8" and replacing it with the citation "§ 3200.0–6".

§3250.4–2 [Amended]

197. Section 3250.4–2 is amended by removing the second and third sentences thereof in their entirety and adding a new sentence at the end thereof to read: "In order to install such a facility, a permit shall be obtained from the authorized officer under the provisions of Part 3260 of this title. Permits granted under Part 3260 of this title shall conform with the requirements of § 3200.0–6 of this title."

§3250.6–1 [Amended]

198. Section 3250.6–1(b) is amended by removing from where it appears the word "Supervisor" and replacing it with the phrase "authorized officer" and by removing from where it appears the citation "43 CFR Part 3260" and replacing it with the citation "Part 3260 of this title".

§3250.6–2 [Amended]

199. Section 3250.6–2(a) is amended by removing from where it appears the word "Secretary" and replacing it with the phrase "authorized officer".

§3250.6–3 [Amended]

200. Section 3250.6–3 is amended by revising the first sentence to read: "Rental at a rate to be determined by the authorized officer shall be paid annually, but said rental shall not be less than $100 per acre or fraction thereof if the utilization facility is for electrical generation, or not less than $10 per acre or fraction thereof if the utilization facility is for non-electrical purposes."

§3250.8 [Amended]

201. Section 3250.8 is amended by:

A. Amending paragraph (a) by removing from the three places it appears the word "must" and replacing it with the word "shall" and by removing from the two places it appears the word "will" and replacing it with the word "shall"; and

B. Amending paragraph (b) by removing from where it appears the phrases "non-refundable fee" and replacing it with the phrase "nonrefundable filing fee".

§3250.9 [Amended]

202. Section 3250.9 is amended by:

A. Amending paragraph (a) by removing from where it appears in the first sentence thereof the phrase", in triplicate," and by removing from where it appears in the third sentence thereof the word "will" and replacing it with the word "shall"; and

B. Amending paragraph (d) by removing from where it appears therein the phrase "Area Geothermal Supervisor" and replacing it with the phrase "authorized officer".

203. The authority citation for Part 3260 continues to read:

Authority: Geothermal Steam Act as amended (30 U.S.C. 1001–1025) and Order No. 3087 (dated Dec. 3, 1982, as amended Feb. 7, 1983) [48 FR 8983].

§3260.0–5 [Amended]

204. Section 3260.0–5 is amended by:

A. Revising paragraph (a) to read:

(a) "Lessee" means a person or entity holding record title in a lease issued by the United States.

and

B. Revising paragraph (b) to read:

(b) "Operator" means any person or entity, including but not limited to the lessee, operating rights owner (sublessee), or facility operator, who has stated in writing to the authorized officer that it is responsible under the terms and conditions of the lease for the operations conducted on the leased lands or a portion thereof.

C. Redesignating paragraphs (c) through (o) as (d) thorugh (p), respectively, and adding a new paragraph (c) to read:

(c) "Operating rights owner" means a person or entity holding operating rights in a lease issued by the United States. A lessee also may be an operating rights owner if the operating rights in a lease or a portion thereof have not been severed from record title.

D. Amending redesignated paragraph (i) by removing from the last sentence thereof the phrase "exclusive right of a lessee to drill" and replacing it with the phrase "right to drill";

E. Revising redesignated paragraph (j) to read:

(j) "Casual use" means activities that involve practices that do not ordinarily lead to any appreciable disturbance or damage to lands, resources, or improvements. For example, activities that do not involve use of heavy equipment or explosives and that do not involve vehicle movement except over established roads and trails are "casual use".

F. Revising redesignated paragraph (o) to read:

(o) "Facility operator" means the operator, licensee, or the individual, corporation, association, or municipality that operates any facility on a Federal geothermal lease for the beneficial utilization of geothermal resources.

and

G. Amending redesignated paragraph (p) by removing from where it appears the phrase "between a lessee" and replacing it with the phrase "between an operating rights owner".

§3261.2 [Amended]

205. Section 3261.2 is amended by removing from where it appears in the next to last sentence thereof the phrase "State agencies, lessees, operators" and replacing it with the phrase "State agencies, operating rights owners, operators," by removing from where it appears in the last sentence thereof the phrase "is authorized to conduct the proposed operations;" and by adding at the end of the section a new sentence to read: "Approval of a plan of operations or other permit does not warrant or certify that the applicant holds legal or equitable title to the subject lease(s) which would entitle the applicant to conduct operations."

§ 3261.8 [Removed]

206. Section 3261.8 is removed in its entirety.

Subpart 3262—[Amended]

207. The title of Subpart 3262 is revised to read: "Subpart 3262—Requirements for Operating Rights Owners and Operators".

§ 3262.1 [Amended]

208. Section 3262.1 is amended by:

A. Amending paragraph (a) by removing from where it appears at the beginning of the paragraph the phrase "The lessee shall" and replacing it with the phrase "The operating rights owner or operator, as appropriate, shall";

B. Amending paragraph (b) by removing from where it appears at the beginning of the paragraph the phrase "The lessee shall" and replacing it with the phrase "The operating rights owner or operator, as appropriate, shall"; and

C. Amending paragraph (c) by removing from where it appears the phrase "created by the lessee's operations" and replacing it with the phrase "created by the operations".

209. Section 3262.2 is revised to read as follows:

§ 3262.2 Conduct of operations.

(a) Whenever a change in operator occurs, the authorized officer shall be notified promptly in writing, and the new operator shall furnish evidence of

sufficient bond coverage in accordance with Subpart 3206 of this title.

(b) In all cases where an individual production well facility, research and demonstration facility, or plant facility is to be operated by a party other than the operating rights owner or licensee, such other party shall submit to the authorized officer the joint facility operating agreement between the operating rights owner or licensee and the facility operator. Such joint facility operating agreement shall authorize, upon acceptance by the authorized officer, the facility operator to enter upon the proposed facility site and related sites and to conduct thereon, in accordance with § 3262.4–1 of this title, such preliminary geologic and soil studies as are appropriate for the planning and design of the facilities necessary for the utilization of geothermal resources in the manner proposed. An operating rights owner, operator, or licensee also may construct and operate such facilities as have been approved under a plan of operation or utilization and for which a permit has been issued pursuant to the regulations in this part and, if a plant facility, for which a license has been issued in accordance with the regulations in this group.

§ 3262.2–1 [Amended]

210. Section 3262.2–1 is amended by:

A. Revising the title to read: "§ 3262.2–1 Local representative."; and

B. Amending the language of the section by removing from where it appears the phrase "the lessee shall" and replacing it with the phrase "the operator shall".

§ 3262.3 [Amended]

211. Section 3262.3 is amended by removing from where it appears at the beginning of both paragraphs (a) and (b) the phrase "The lessee shall" and replacing it with the phrase "The operating rights owner shall".

§ 3262.4 [Amended]

212. Section 3262.4 is amended by removing from where it appears in the opening paragraph three times the word "lessee," and replacing it with the word "operator,".

§ 3262.4–1 [Amended]

213. Section 3262.4–1 is amended by:

A. Amending the opening paragraph of the section by removing from where it appears in the first sentence the phrase "the lessee, licensee, or the designated facility" and replacing it with the phrase "the operating rights owner, operator, licensee, or facility", and by removing from where it appears in the third sentence of the opening paragraph the phrase "the lessee, licensee" and replacing it with the phrase "the operating rights owner, licensee"; and

B. Amending paragraph (i) by removing from where it appears the phrase "The lessee, licensee," and replacing it with the phrase "The operating rights owner, licensee,".

§ 3262.4–2 [Amended]

214. Section 3262.4–2 is amended by removing from the 4 places it appears the phrase "the lessee" and replacing it with the phrase "the operator", and by removing from where it appears the phrase "a lessee" and replacing it with the phrase "an operator".

§ 3262.5 [Amended]

215. Section 3262.5 is amended by removing from the 2 places it appears the phrase "The lessee shall" and replacing it with the phrase "The operator shall".

§ 3262.5–1 [Amended]

216. Section 3262.5–1 is amended by removing from the 2 places it appears the phrase "The lessee" and replacing it with the phrase "The operator", and by removing from where it appears in paragraph (c) the phrase "lessee will" and replacing it with the phrase "operator shall".

§ 3262.5–2 [Amended]

217. Section 3262.5–2 is amended by removing from the two places it appears the phrase "The lessee" and replacing it with the phrase "The operator".

§ 3262.5–3 [Amended]

218. Section 3262.5–3 is amended by removing from where it appears the phrase "the lessee unless requested by an offset lessee, and then, at the risk and expense of the offset lessee.", and replacing it with the phrase "the operator unless requested by an offset operating rights owner or operator, and then, at the risk and expense of the offset party."

§ 3262.5–4 [Amended]

219. Section 3262.5–4 is amended by removing from the beginning of the section the phrase "The lessee or operator" and replacing it with the phrase "The operator".

§ 3262.5–5 [Amended]

220. Section 3262.5–5 is amended by removing from the 2 places it appears the phrase "lessee shall" and replacing it with the phrase "operator shall".

§ 3262.6 [Amended]

221. Section 3262.6 is amended by removing from the 2 places it appears the phrase "lessee shall" and replacing it with the phrase "operator shall".

§ 3262.6–1 [Amended]

222. Section 3262.6–1 is amended by removing from where it appears at the beginning of the section the phrase "The lessee or, as appropriate, the licensee, designated operator, or designated facility operator" and replacing it with the phrase "The operator, licensee, or facility operator, as appropriate,".

§ 3262.6–2 [Amended]

223. Section 3262.6–2 is amended by removing from the 2 places it appears the phrase "the lessee" and replacing it with the phrase "the operator".

§ 3262.6–3 [Amended]

224. Section 3262.6–3 is amended by removing from where it appears at the beginning of the section the phrase "The lessee shall" and replacing it with the phrase "The operator shall".

§ 3262.7 [Amended]

225. Section 3262.7 is amended by removing from where it appears at the beginning of the section the phrase "The lessee shall" and replacing it with the phrase "The operator shall".

§ 3262.7–1 [Amended]

226. Section 3262.7–1 is amended by removing from the 2 places it appears the phrase "The lessee shall" and replacing it with the phrase "The operator shall".

Subpart 3263—[Amended]

§ 3263.1 [Amended]

227. Section 3263.1 is amended by removing from where it appears at the beginning of the section the phrase "The lessee shall" and replacing it with the phrase "The operator shall".

§ 3263.2 [Amended]

228. Section 3263.2 is amended by removing from where it appears at the beginning of the section the phrase "The lessee shall" and replacing it with the phrase "The operator shall".

229. Section 3263.3 is revised to read:

§ 3263.3 Commingling production.

The authorized officer may authorize an operator to commingle production from wells on a lease with production from other leases subject to such conditions as may be prescribed.

Subpart 3264—[Amended]

§ 3264.2–2 [Amended]

230. Section 3264.2–2(d) is amended by removing from where it appears the phrase "the lessee commences" and

replacing it with the phrase "the operator commences".

§ 3264.2-3 [Amended]

231. Section 3264.2-3 is amended by removing from where it appears at the beginning of the section the phrase "The lessee shall" and replacing it with the phrase "The operator shall".

§ 3264.3 [Amended]

232. Section 3264.3 is amended by removing from where it appears the phrase "the lessee or operator must" and replacing it with the phrase "the operator shall".

§ 3264.4 [Removed]

§ 3264.5 [Redesignated as § 3264.4 and amended]

233. Section 3264.4 is removed in its entirety and § 3264.5 is redesignated as § 3264.4 and is amended by removing the phrase "the lessee so long" and replacing it with the phrase "the operating rights owner or operator, as appropriate, so long".

Subpart 3265.1—[Amended]

234. Section 3265.1(a) is amended by removing from the beginning of the section the phrase "Whenever a lessee or" and replacing it with the phrase "Whenever an operating rights owner, operator, or", by removing from where it appears in the first sentence the phrase "give the lessee notice "and replacing it with the phrase "give notice", and by removing from the beginning of the second sentence the phrase "Failure by the lessee to perform" and replacing it with the phrase "Failure by the party to perform".

Group 3000—[Amended]

235. The Note at the beginning of Group 3000 is amended bya revising the first sentence there of to read as follows:

Note: The information collection requirements contained in Part 3000 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1004-0145.

Group 3100—[Amended]

236. The Note at the beginning of Group 3100 is amended by revising the first sentence thereof to read as follows:

Note: The information collection requirements contained in Parts 3100, 3110, 3120, 3130, 3140, 3150, and 3160 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance numbers 1004-0034, 1004-0065, 1004-0067, 1104-0074, 1004-0132, 1004-0134, 1004-0135, 1004-0136, 1004-0137, 1004-0138, and 1004-0145.

Group 3200—[Amended]

237. Group 3200—Beothermal Resources Leasing is amended by inserting at the beginning thereof the following Note:

Note: The information collection requirements contained in Parts 3200, 3210, 3220, 3240, 3250, and 3260 of Group 3200 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance numbers 1004-0074 and 1004-0132. The information is being collected to permit the authorized officer to determine whether an applicant is qualified to hold a lease for the exploration, development, and utilization of geothermal resources on the public lands. The information will be used to make this determination. A response is required to obtain a benefit.

PART 3210—[AMENDED]

238. The Note at the beginning of Part 3210 is removed.

PART 3250—[AMENDED]

239. The Note at the beginning of Part 3250 and the Note at the beginning of Subpart 3250 are removed.

PART 3260—[AMENDED]

240. Note 1 at the beginning of Part 3260 is amended by revising the clearance number at the end of the first sentence of paragraph (b) to read "1004-0132".

241. Note 2 at the beginning of Part 3260 is revised to read as follows:

Note 2: The information collection requirements contained in Part 3260 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1004-0132. The information is being collected to evaluate the technical feasibility and environmental impacts of geothermal operations on Federal lands. Clearance number 1004-0132 also covers information required by § 3264.3 as is required to document exploration expenditures for which diligence credit is desired in accordance with § 3203.5. A response is required to obtain a benefit.

[FR Doc. 88-10808 Filed 5-13-88; 8:45 am]

BILLING CODE 4310-84-M

II-2608

ACTION: Final rulemaking, correction.

SUMMARY: This document corrects typographical and editorial mistakes made in the final rulemaking on oil and gas leasing and geothermal leasing published in the Federal Register on May 16, 1988 (53 FR 17340). Also, Additional corrections may be found in a document published by the Federal Register elsewhere in this issue.

EFFECTIVE DATE: June 15, 1988.

ADDRESS: Inquires or suggestions should be sent to: Director (500), Bureau of Land Management, Room 5647, Main Interior Bldg., 1800 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Lois Mason, (202) 653–2190.

In the corrections listed below, the item numbers correspond to the item numbers in the original final rulemaking. The following corrections are made in the final rulemaking on Oil and Gas Leasing and Geothermal Resources Leasing, published in the Federal Register on May 16, 1988 (53 FR 17340):

34. On page 17355, first column, at the end of this item, add the words, " and by removing from where it appears the word 'condition' and replacing it with the word 'conditions' ".

67. On page 17359, first column, in paragraph E. of this time, at line 3 thereof, change "assignor" to "assignee".

72. On page 17361, third column, in § 3154.3, insert the word "have" between "permit" and "been" at line 5 thereof, so that the line reads: "notice of intent or permit have been met."

110. On page 17365, third column, in paragraph B, remove the word "that" from the third line from the end, so that the phase being removed reads: "by a working interest owner obtains".

117. On page 17367, second column, in line 13 of § 3200.2, change "estate" to "estates", and in the next to last line of § 3200.2, insert the word "Act" between "Management" and "of".

145. On page 17369, second column, the last sentence of § 3206.1–2, "For unit bond forms see subpart 3284 of this title.", is removed.

154. On page 17370, first column, in line 1 insert the word "on" between the quotation mark and the word "unleased".

August 9, 1988.

James E. Cason,

Deputy Assistant Secretary of the Interior.

[FR Doc. 88–18906 Filed 8–19–88; 8:45 am]

BILLING CODE 4310–84–M

43 CFR Parts 3000, 3100, 3110, 3120, 3130, 3160, 3180, 3200, and 3280

[AA–620–88–4111–01–24–10; Circular No. 2608]

Minerals Management; General: Oil and Gas Leasing: Noncompetitive Leases: Competitive Leases: Oil and Gas Leasing—National Petroleum Reserve—Alaska: Onshore Oil and Gas Operations: Onshore Oil and Gas Unit Agreements—Unproven Areas: Geothermal Resources Leasing; General: Geothermal Resources Unit Agreements—Unproven Areas

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking; correction; interpretation.

SUMMARY: This document corrects typographical and editorial errors in the final rulemaking implementing the Federal Onshore Oil and Gas Leasing Reform Act of 1987 (the Reform Act), published in the Federal Register on June 17, 1988 (53 FR 22814). This document also provides further interpretation of that rulemaking with regard to (1) the need for consent of a surety for an operator to be covered by a lessee's statewide or nationwide bond, and (2) whether a future interest lessee who holds the present interest lease and assigns or loses it also assigns or loses the future interest lease.

EFFECTIVE DATE: June 17, 1988.

ADDRESS: Inquiries or suggestions should be sent to: Director (500), Bureau of Land Management, Room 5647, Main Interior Bldg., 1800 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Judith I. Reed, (202) 653–2190.

SUPPLEMENTARY INFORMATION: In addition to the correction made below, this document responds to public inquiries requesting clarification of certain provisions of the final rulemaking published in the Federal Register on June 17, 1988, implementing the Reform Act. Further corrections of printing errors may also be found in a notice published by the Federal Register elsewhere in this issue.

Since promulgation of the final rulemaking on June 17, 1988, the Bureau of Land Management has been requested to clarify whether the provision of the last sentence of § 3104.2, which states that the "operator on the ground shall be covered by a bond in his/her own name as principal, or a bond in the name of the lessee or sublessee, provided that a consent of the surety, or the obligor in the case of a personal bond, to include the operator under the coverage of the bond is furnished to the Bureau office maintaining the bond", applies with equal force to statewide and nationwide bonds provided for in § 3104.3.

Because a statewide or nationwide bond is a substitute form of bond allowing lessees and sublessees to proceed without multiple individual lease bonds, the requirement that operators provide a consent of surety to conduct operations under coverage of another party's bond applies equally to both individual lease bonds and statewide or nationwide bonds.

The Bureau has also been requested to clarify the portions of §§ 3110.9–4(a)(2) and 3120.7–2(a)(2) that require Federal future interest lessees who also are present interest lessees of the same lands to lose their future interest leases to the same extent that their interest in the present interest lease is lost through expiration, termination, cancellation, and relinquishment.

Prior to this rulemaking, future interest lessees have been required, as a condition precedent to issuance of their lease, to subscribe to a supplemental agreement providing that the loss of the present interest lease, to the extent that the lessee held any such present interest, would cause the loss of the future interest lease to the same extent. While the rulemaking eliminated the old supplemental agreement, whose primary function was to prescribe rentals and royalties due prior to the vesting of the interest of the United States, the other provisions of the agreements governing assignments remain in effect.

From the viewpoint of the lessor, it is advantageous and in the public interest the assure that there is a smooth transition between the present interest lessee and the future interest lessee at the time the basic ownership vests in the United States. This is done by ensuring that the present interest lessee is also the future interest lessee. However, in a competitive situation, the United States cannot ensure that that transition would be smooth when the present interest owner fails to become the high bidder and, as a result, the future interest owner. Even so, it remains in the public interest to provide, whenever possible, for a smooth transition that does not threaten production and the royalty income stream. Accordingly, it has always been and remains policy that when a future interest lessee holding the present interest lease assigns or loses the present interest lease, he/she also assigns or loses the future interest lease.

The Bureau of Land Management expects that the prudent present interest lessee will logically acquire the future interest lease to protect any investment

in production. The present interest lessee can obtain the future interest lease by outbidding others present at the final auction. A common, if not universal, provision of the present interest fee leases is for continuation of the lease so long as the lease is producing. Most present interest lessees should logically seek to develop their present lease once they have obtained the future interest lease.

In short, the future interest regulations promote two policy objectives: competitiveness and continuity. The destruction of this continuity is sufficient reason to cause the loss of the future interest lease and to allow the United States to expose the future interest to competitive bidding again, where the new present interest owner has a fair opportunity to acquire the future interest lease and thus reestablish the continuity.

Accordingly, the Department of the Interior has no present plans to amend §§ 3110.9 or 3120.7, as they currently accomplish these policy objectives.

The following corrections are made in the final rulemaking implementing the Reform Act that was published on June 17, 1988 (53 FR 22814):

1. On page 22840, middle column, the amendatory language of Item 37 is corrected by revising it to read as follows:

"37. Section 3108.3 is amended by revising paragraph (a), redesignating paragraph (b) as paragraph (d), removing paragraph (c), and adding new paragraphs (b) and (c), to read as follows:

2. In line 1 of § 3110.5–5 (page 22843, first column), change "variations" to "variation".

August 9, 1988.

James E. Cason,

Deputy Assistant Secretary of the Interior.

[FR Doc. 88–18905 Filed 8–19–88; 8:45 am]

BILLING CODE 4310–84–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA–6933]

Changes in Flood Elevation Determinations; Maryland and New Jersey

AGENCY: Federal Insurance Administration, Federal Emergency Management Agency.

ACTION: Interim rule.

SUMMARY: This rule lists those communities where modification of the base (100-year) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base (100-year) elevations for new buildings and their contents and for second layer insurance on existing buildings and their contents.

DATES: These modified elevations are currently in effect and amend the Flood Insurance Rate Map (FIRM) in effect prior to this determination.

From the date of the second publication of notice of these changes in a prominent local newspaper, any person has ninety (90) days in which he can request through the community that the Administrator, reconsider the changes. These modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base (100-year) flood elevation determinations are available for inspection at the office of the Chief Executive Officer of the community, listed in the fifth column of the table. Send comments to that address also.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2767.

SUPPLEMENTARY INFORMATION: The numerous changes made in the base (100-year) flood elevations on the FIRM(s) make it administratively infeasible to publish in this notice all of the modified base (100-year) flood elevations contained on the map. However, this rule includes the address of the Chief Executive Officer of the community where the modified base (100-year) flood elevation determinations are available for inspection.

Any request for reconsideration must be based on knowledge of changed conditions, or new scientific or technical data.

These modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234) and are in accordance with the National Flood Insurance Act of 1968, as amended, (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR 65.4.

For rating purposes, the revised community number is listed and must be used for all new policies and renewals.

These base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program.

These elevations, together with the floodplain management measures required by § 60.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time, enact stricter requirements on its own, or pursuant to policies established by other Federal, State or regional entities.

The changes in the base (100-year) flood elevations listed below are in accordance with 44 CFR 65.4.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains.

PART 65—[AMENDED]

The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, E.O. 12127.

§ 65.4 [Amended]

Section 65.4 is amended by adding in alphabetical sequence new entries to the table.

Corrections

Federal Register
Vol. 53, No. 162
Monday, August 22, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Parts 1405 and 1421

Loans, Purchases and Other Operations; Grains and Similarly Handled Commodities

Correction

In proposed rule document 88-18160 beginning on page 30068 in the issue of Wednesday, August 10, 1988, on page [illegible], in the second column, in the file [illegible]at the end of the document, "FR Doc. 88-16160" should read "FR Doc. 88-1816".

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[ERA Docket No. 88-24-NG]

Western Gas Marketing U.S.A. Ltd.; Order Granting Blanket Authorization To Import and Export Natural Gas

Correction

In notice document 88-18399 appearing on page 30711 in the issue of Monday, August 15, 1988, the Docket Number in the heading should read as it appears above.

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3000, 3100, 3110, 3120, 3160, and 3200

[AA-620-88-4111-01-24-10, Circular No. 2608]

Minerals Management; General Oil and Gas Leasing; Noncompetitive Leases; Competitive Leases; Oil and Gas Leasing—National Petroleum Reserve—Alaska; Onshore Oil and Gas Operations; Onshore Oil and Gas Unit Agreements—Unproven Areas; Geothermal Resources Leasing; General: Geothermal Resources Unit Agreements—Unproven Areas

Correction

In rule document 88-13680 beginning on page 22814 in the issue of Friday, June 17, 1988, make the following corrections:

PART 3000—[CORRECTED]

1. On page 22835, in the second column, in amendatory instruction 2, in the first line, "2000.0-5" should read "3000.0-5".

PART 3100—[CORRECTED]

2. On the same page, in the third column, in amendatory instruction 5, in the seventh line, "(b)92)(vi)" should read "(b)(2)(vi)".

§ 3100.0-3 [Corrected]

3. On page 22836, in the first column, in § 3100.0-3(a)(2)(x), in the third line, "Executive" was misspelled.

4. On the same page, in the same column, in amendatory instruction 6, in the last line "U.S.C. 6506" should read "U.S.C. 6508".

§ 3101.1-4 [Corrected]

5. On the same page, in the third column, in § 3101.1-4, in the sixth line, "require" should read "required"; and in the next to last line, "a least a" should read "at least a".

§ 3103.2-1 [Corrected]

6. On page 22837, in the third column, in § 3103.2-1(a), in the eighth line, "years" should read "year's".

§ 3104.3 [Corrected]

7. On page 22839, in the first column, in § 3104.3(a), in the first line, after "lessees" insert a comma; and in the next to last line, "covering" was misspelled.

§ 3107.2-3 [Corrected]

8. On page 22840, in the first column, in § 3107.2-3, in the last line, "to so. * * *" should read "to do so. * * *".

PART 3110—[CORRECTED]

9. On page 22840, in the third column, in the third line from the bottom, in the "Authority", "supplemental" should read "supplemented".

§ 3110.1 [Corrected]

10. On page 22841, in the first column, in § 3110.1(b), in the 11th line, "§ 3120.23-1" should read "§ 3120.3-1".

§ 3110.3-1 [Corrected]

11. On the same page, in the second column, in § 3110.3-1, in the second line, "days" should read "years".

§ 3110.4 [Corrected]

12. On page 22842, in the first column, in § 3110.4(a), in the second line, "§ 3109.9" should read "§ 3110.9"; and in the fifth line, "remittance" should read "remittances"; and in the sixth line, "shall obtain" should read "shall not obtain".

PART 3120—[CORRECTED]

§ 3120.3-2 [Corrected]

13. On page 22844, in the third column, in § 3120.3-2, introductory text, in the last line, "director" should read "Director".

PART 3160—[CORRECTED]

§ 3162.3-1 [Corrected]

14. On page 22846, in the second column, in § 3162.3-1(e), in the fifth line, after "location" insert a comma.

PART 3200—[CORRECTED]

§ 3206.1-1 [Corrected]

15. On page 22847, in the third column, in § 3206.1-1(c)(5)(iii), in the eighth line, "conditions of" should read "conditions or".

BILLING CODE 1505-01-D

Federal Register

Friday
June 17, 1988

SEE CORRECTIONS ON PAGES 31867 & 31958

Part III

Department of the Interior

Bureau of Land Management

43 CFR Part 3000, etc.

Minerals Management; Onshore Oil and Gas and Geothermal Leasing; Final Rulemaking

RECEIVED
JAN 24
CSO MAIL ROOM

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3000, 3100, 3110, 3120, 3130, 3160, 3180, 3200, and 3280

[AA-620-88-4111-01-24-10; Circular No. 2608]

Minerals Management; General Oil and Gas Leasing; Noncompetitive Leases: Competitive Leases: Oil and Gas Leasing—National Petroleum Reserve—Alaska: Onshore Oil and Gas Operations: Onshore Oil and Gas Unit Agreements—Unproven Areas: Geothermal Resources Leasing; General: Geothermal Resources Unit Agreements—Unproven Areas

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking amends the existing regulations covering competitive and noncompetitive onshore oil and gas leasing on Federal mineral lands managed by the Bureau of Land Management, including Federal minerals underlying National Forest System lands, to comply with the provisions of the Federal Onshore Oil and Gas Leasing Reform Act of 1987 (Pub. L. 100-203), enacted as part of the Omnibus Budget Reconciliation Act of 1987, hereinafter referred to as the Reform Act. Section 5107 of the Reform Act requires that final regulations be issued within 180 days after the date of enactment, December 22, 1987, to be effective when published in the Federal Register. This final rulemaking also contains amendments to implement bonding and reclamation provisions contained in the Reform Act as well as revisions of bonding requirements recommended by a Bureau of Land Management task force that reviewed bonding procedures for oil and gas and geothermal resources leasing.

The provisions of this final rulemaking include procedures for the conduct of oral auctions by each Bureau of Land Management State Office at least quarterly for lands available for oil and gas leasing. The payments required on the day of the auction for each parcel bid on are required to include the national minimum acceptable bid of $2 per acre, the total first year's rental, and a $75 administrative fee to help defray the costs of the sale. The remainder of the bonus bid moneys for each parcel are required to be remitted within 10 working days from the last day of the auction, otherwise all moneys submitted are forfeited. Noncompetitive offers for parcels not sold will be accepted for a 2-year period beginning the first business day following the auction or, where formal nominations are used, the first business day following the posting of the sale notice. Those offers filed from the first day following the end of the competitive process until the end of that same month are required to be described only by the parcel number used in the sale list or notice. For the remainder of the 2-year period, the legal land description of the parcel(s) or any portion thereof must be provided. In addition to offering parcels selected by the Bureau, the final rulemaking provides administrative flexibility to allow for either informal expressions of interest or a formal nomination process to determine the lands to be offered competitively. As stated later in this preamble, the Director elects to permit informal expressions of interest but declines to implement a formal nomination process at this time. Additionally, noncompetitive offers may be filed on certain unleased lands prior to the competitive process. However, no noncompetitive lease may issue for any such lands until they have been offered competitively and filed to receive a bid. The final rulemaking allows letters of credit and certificates of deposit as acceptable forms of bonding, and also requires 100 percent bond coverage for any entity that has failed to comply with the reclamation requirements on other leases over the past 5 years. For the majority of operators, the existing bond amounts are considered adequate to ensure the complete and timely reclamation of the lease tract and restoration of any lands or surface waters adversely affected by lease operations. An acceptable surface use plan of operations, in addition to the drilling plan, is required from all operators prior to approval, following 30 days posting, of the drilling permit by the authorized officer.

EFFECTIVE DATE: June 17, 1988.

ADDRESS: Inquiries or suggestions should be sent to: Director (500), Bureau of Land Management, Room 5647, Main Interior Bldg., 1800 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Judith I. Reed, (202) 653-2190.

SUPPLEMENTARY INFORMATION: A proposed rulemaking amending the regulations in 43 CFR Parts 3000, 3100, 3110, 3120, 3130, 3160, 3180, 3200, and 3280 was published in the Federal Register on March 21, 1988 (53 FR 9214), with a 30-day comment period. During the comment period, comments were received from 94 sources: 62 from business interests, primarily related to the oil and gas industry; 4 from attorneys; 11 from associations; 3 from State Governments; 1 from a Member of Congress; and 13 from Federal agencies. A few comments requested that the comment period be extended. Other commenters did not request an extension of the comment period, but rather suggested that the Department continue to solicit comments or that public hearings be held. Because of the short statutory deadline under section 5107 of the Reform Act, the Bureau of Land Management could not allow an extension of the comment period and still be able to meet the statutory 180-day deadline. Many of the Bureau State Offices have held oil and gas meetings and forums during this 6-month period to describe and discuss the program changes and to address a great many of the questions and comments raised concerning the changes required by the Reform Act. The Bureau State Office oil and gas meetings will continue to provide a forum to discuss matters concerning the leasing program. The Bureau will consider reviewing the regulations implementing new provisions mandated by the Reform Act in connection with the statutory provision for the Secretary's review, following the second anniversary of the Reform Act, of the minimum acceptable competitive bid.

A few comments expressed concern regarding the impact of the Reform Act and its implementing regulations on independent operators of the oil and gas industry. The comments stated that the Federal onshore oil and gas leasing provisions of the Reform Act would pressure the independent operators and limit wildcat drilling and exploration. The Bureau of Land Management is aware of these concerns. The final rulemaking allows as much administrative flexibility and simplicity as possible within the constraints of the Reform Act, to serve the public interest.

Numerous comments were received on specific sections of the proposed rulemaking. The comments and the action taken in response to them are discussed in this preamble. In some instances, comments were concerned with matters that were addressed in the final rulemaking published on May 16, 1988 (53 FR 17340).

Part 3000—Minerals Management: General

One comment suggested that authority citations be limited to Groups rather than Parts of each Code of Federal Regulations section. The regulations of the Office of the Federal Register require that an "authority citation" be included prior to each part of the rules. The

authority section also is included within certain parts of the Code of Federal Regulations since it makes the part complete, particularly where there are special statutory provisions in certain parts that need to be fully identified in the authority section of the specific rule part.

Two comments recommended that the citations of authorities should include the Federal Oil and Gas Leasing Reform Act of 1987. Since the Reform Act is an amendment to the Mineral Leasing Act (30 U.S.C. 181 *et seq.*), no further citation is required. The final rulemaking makes no change in the authority citations contained in the proposed rulemaking.

Section 3000.0–5 Definitions.

A few comments suggested removal of the proposed rulemaking § 3000.0–5(f)(1) that would allow parcel nominations of expressions of interest to be filed in a Bureau of Land Management office other than the Bureau office having jurisdiction over the lands. This suggestion is adopted by the final rulemaking. Experience during the test sales has shown that the handling of nominations by another Bureau office is a cumbersome process. This section of the regulation has been removed in the final rulemaking.

Some comments suggested that a new paragraph "(p)" be added in § 3000.0–5 of the final rulemaking to define "control" as found in section 5102(d) of the Reform Act (30 U.S.C. 226(g)). The final rulemaking has been amended at § 3102.5–1(f) to include a reference to § 3400.0–5(rr) for a definition of "controlled by or under common control with."

Section 3000.4 Appeals.

A few comments noted an inconsistency between the appeal provisions of this section of the existing regulations and those contained in §§ 3101.7–3 and 3120.1–3 of the proposed rulemaking. This section has been amended in the final rulemaking to add certain citation cross-references to clarify when the appeal provisions of 43 CFR Part 4 are not wholly applicable.

Section 3000.9 Enforcement.

Several comments addressed § 3000.9 of the proposed rulemaking. The majority of the comments expressed a need to clarify and establish the limits of this provision. Most of the comments were concerned that parties other than the Government would use the new provision of the Mineral Leasing Act to create a private right of action. One comment suggested that the anti-fraud provisions of the Reform Act were aimed only at past abuses. One comment expressed the view that the final rulemaking should limit the applicability of this provision and penalties to leases issued under the mineral leasing laws subsequent to enactment of the Reform Act. One comment expressed concern that the wording of the regulation does not allow the Bureau of Land Management special agents, U.S. Postal Inspectors, the authorized officer, and others, to participate in enforcement actions. The enforcement paragraph in the proposed rulemaking was intended to recognize the existence of section 41 of the Mineral Leasing Act. The provisions of this section of the Act, including the interpretation thereof, are under the jurisdiction of the Department of Justice. The language in the regulation does not preclude such other parties from assisting the Justice Department in carrying out the enforcement provisions of the Reform Act. The final rulemaking adopts the proposed language without change.

Part 3100—Oil and Gas Leasing

Section 3100.0–3 Authority.

One comment expressed concern about § 3100.0–3 (a)(2) and (b)(2) of the proposed rulemaking, and suggested that a surface managing agency would informally, without proper procedure, recommend wilderness allocation for lands whenever it received a leasing request. The comment requested identification of the procedures for recommending wilderness allocation. The Bureau is not aware of any specific procedures by which a surface managing agency recommends that land be allocated for wilderness. The Bureau interprets this provision of the regulations to refer to lands that the surface managing agency has already recommended for wilderness allocation to the President or to the Congress. The final rulemaking adopts the proposed language of § 3100.0–3 (a)(2) and (b)(2) without change.

Another comment suggested that lease offers within the specific types of wilderness study areas identified in § 3100.0–3 (a)(2) and (b)(2) of the proposed rulemaking that were pending upon enactment of the Reform Act should not be rejected, and contended that the provision of the new law prohibiting leasing of these areas did not require rejection of such pending offers. Apart from this rulemaking, by administrative action, the Bureau of Land Management will keep as pending those pending offers located in Bureau wilderness study areas or in areas allocated for wilderness or further planning in Executive Communication 1504.

One commenter suggested that § 3100.0–3(g)(4) concerning National Parks and Monuments be revised to be consistent with the terminology used in § 3100.0–3 (a)(2) and (b)(2) of the final rulemaking published in the Federal Register on May 16, 1988 (53 FR 17340). The Bureau of Land Management concurs and this change to refer to units of the National Park System has been adopted in the final rulemaking.

Section 3100.0–5 Definitions.

Several comments suggested that "control" for purposes of determining compliance with section 5102(d) of the Reform Act (30 U.S.C. 226(g)) should be defined in § 3100.0–5 of the regulations. The final rulemaking clarifies this matter by placing in § 3102.5–1(f) a cross-reference to the definition contained in 43 CFR 3400.0–5(rr) of the existing regulations. The requirements for "control" in section 5102(d) of the Reform Act are consistent with those in the Mineral Leasing Act, 30 U.S.C. 201(a)(2)(A) pertaining to control of Federal coal lease holdings. There is further discussion of this matter later in this preamble under § 3102.5.

A few comments suggested that the Bureau was premature in removing the definition of a "known geological structure" in this section and in § 3100.3 of the existing regulations. However, since the "grandfathered" offers will be adjudicated under the regulations in effect at the time of filing, which remain available for reference in earlier editions of the CFR, this provision is now obsolete and should not be retained. Including it in current regulations could cause confusion when new offers are submitted.

Several comments noted that Subpart 3110 and the definition in § 3100.0–5(k) of the proposed rulemaking failed to allow for the filing of noncompetitive offers prior to the competitive offering of such lands. The commenters suggested that such offers be allowed for wildcat lands for leasing such lands so long as they are first processed through the competitive process. This recommendation is adopted. The definition of the term "offer for noncompetitive lease" in paragraph (k) of this section in the proposed rulemaking has been removed. A specific definition of this term is not necessary. Subpart 3110 more properly addresses the provisions concerning noncompetitive lease offers. Further discussion of this provision is made later in this preamble under Subpart 3110.

A few comments suggested that § 3100.0–5(1) of the proposed rulemaking be amended to require that all bids be on a per-acre basis. The type of approach of bidding has not been specified in the final rulemaking in order to allow administrative flexibility in setting bidding procedures by individual Bureau of Land Management State Offices. Further discussion on this issue is made later in this preamble in conjunction with Subpart 3120.

Section 3101.1–3 Stipulations and information notices.

A technical change is made in this section of the final rulemaking published on May 16, 1988 (53 FR 17340) to clarify that when noncompetitive lease offers are filed during the 2-year period subsequent to competitive offering, the offeror is deemed to have agreed to all applicable lease stipulations that are indicated in the list or notice of parcels available that was posted in the proper BLM office.

In response to comments made on § 3110.4 of the proposed rulemaking requesting that offerors be notified of the stipulations placed on lands in offers filed prior to a competitive offering, the final rulemaking amends § 3101.1–3 to specify that, unless the offer is withdrawn, the offeror is deemed to have agreed to the stipulations applicable to the parcel as indicated in the List of Land Availale for Competitive Nominations or the Notice of Competitive Lease Sale. Further discussion may be found later in this preamble under § 3110.6.

Section 3101.1–4 Modification or waiver of lease terms and stipulations.

Use of the term "waiver" in this section of the proposed rulemaking resulted in misunderstanding in numerous comments. There are situations where a stipulation is no longer needed to protect other resources and under such situations waiver is an appropriate remedy as well as lease modification. The Bureau will undertake to identify such actions which are deemed substantial and, as required by statute, provide at least 30 days notice.

Two comments on this section of the proposed rulemaking suggested that the proposed language does not fully impement the Reform Act in that all stipulation "waivers" would not be subjected to public review. These commenters contended that the Reform Act's reference to "substantial modification" of lease terms should include all stipulation "waivers." Given the nature of stipulation exceptions that are generally granted, and the basis used for granting such exceptions, it is clear that not all involve substantial modification of the lease terms. Approval of waiver or modification will reside with the authorized officer who is in the best position to exercise that judgment.

Some of the comments suggested that this section specifically provide lessees and operators an opportunity to request waivers and require the authorized officer to make a determination on a waiver within 30 days of receipt of evidence of whether the condition justifying a stipulation modification continues to exist. No change is made in the final rulemaking to accommodate these comments because lessees and operators are not precluded from petitioning for a lease modification. However, consideration of lease modifications should ordinarily be prompted by a specific proposal for lease operations rather than by a desire to, in effect, renegotiate the terms of a lease. A technical change is made in the final rulemaking to make it clear that a substantial modification or waiver of a lease term subsequent to lease issuance is also required to be subject to public review for at least 30 days.

A few comments requested that the final rulemaking clarify, with respect to National Forest System lands, who is the appropriate authorized officer, a representative of the Forest Service, the Bureau, or both agencies. These comments also suggested that the final rulemaking require that the authorized officer follow the posting procedures required in the Reform Act in such a manner that the stipulation modification would be required to be posted concurrently with the Application for Permit to Drill in order to avoid additional delay in development plans of an operator. Some comments also suggested that the time necessary for the Bureau to identify the need for stipulation waivers not identified by the operator could delay posting of the Application for Permit to Drill. Operators and the public are advised that posting of a lesae waiver or modification will be as prompt as possible. The final rulemaking has not adopted this suggestion. The authorized officer for any lease waiver or modification is the Bureau of Land Management State Director since that is the office of lease issuance. However, with respect to National Forest System lands, the Bureau cannot waive or modify a stipulation that involves surface disturbance without the approval of the U.S. Forest Service since the Reform Act directs the Secretary of Agriculture to regulate all surface disturbing lease activities within the National Forest System.

Section 3101.7–1 Federal lands administered by an agency outside of the Department of the Interior.

Numerous comments were received on this section. Some of the comments recommended that the final rulemaking make it clear whether approval from the surface managing agency to lease is required to be received prior to or after a competitive lease sale. A few comments objected to the requirement that the surface managing agency must give approval before leasing. It is Bureau of Land Management policy to offer lands, the surface of which is administered by another agency, only after leasing recommendations or, when statutorily required, consent or lack of objection and stipulation requirements have been rendered from the surface managing agency. The proposed provision is adopted without change in the final rulemaking.

Other comments suggested that specific language should be added in the final rulemaking to clarify the requirements for consent for Forest Service administered lands. The comments have been adopted in the final rulemaking and a new paragraph (c) is added to address lands reserved from the public domain as well as acquired lands administered by the Forest Service.

Several comments expressed concern about the effect of inaction by the Forest Service on requests for leasing. Some comments suggested that the Bureau of Land Management publish a list of lands "withdrawn" from leasing due to Forest Service nonconsent. This suggestion has not been adopted by the final rulemaking since it is Bureau policy to offer only those lands for which consent, as required by law, and stipulation requirements have been received from the surface managing agency. The Forest Service is required to respond favorably or to object to leasing requests from the authorized officer of BLM, based on Forest management plans. The information in these plans is available to the public. The public also may request information from the U.S. Forest Service directly.

One comment suggested that the final rulemaking combine the proposed § 3101.7–1(a) and (b) into one paragraph and expressed the view that the criteria for agency consent for leasing public domain and acquired lands minerals now appear to be the same. This recommendation has not been adopted in the final rulemaking, because new paragraph (c) in the final rulemaking has added further clarification. Accordingly, the applicability of these regulations to

agencies other than the Forest Service, with respect to recommendations to lease public domain minerals, also is clarified.

Several comments recommended that surface managing agency consent and stipulations submitted to the Bureau for sale parcels should be binding on the surface managing agency for the 2-year noncompetitive period as well. The comments expressed the view that such a requirement would eliminate repeated reviews of leasing proposals by the surface managing agency during this brief period when surface conditions likely would not change. This recommendation has not been adopted by the final rulemaking because changing environmental conditions may require modification of stipulations and/or reaffirmation of the consent to lease at some later time within the 2-year period prior to the issuance of a noncompetitive lease. Moreover, the Bureau cannot impose such a binding requirement on any other surface managing agency. In practice, however, a change in consent or stipulations is not likely to occur immediately after a lease sale.

Section 3101.7–2 Action by the Bureau of Land Management.

This section received only a few comments. One comment suggested that this section should more clearly reflect the role of Bureau of Land Management in the leasing of National Forest System lands in light of the expanded role provided the Forest Service in the Reform Act. Another comment suggested that the Bureau should not be involved in the management of Forest Service lands. The Bureau cannot abrogate its legal responsibility for the final discretionary authority for issuance of leases. The comments have not been adopted in the final rulemaking.

Section 3101.7–3 Appeals.

Several of the comments received on this section of the proposed rulemaking supported the process of appealing decisions of the surface managing agency directly to that agency (particularly with respect to the U.S. Forest Service) for decisions made by that agency objecting to leasing, refusing to lease, or consenting to leasing only with stipulations. However, some comments expressed the view that appeals should be handled cooperatively between the Department of the Interior and the Forest Service, or that only one agency should be designated to handle appeals to avoid dual appeal processes or the "stacking" of appeals first to the Forest Service and then to the Interior Board of Land Appeals. One comment suggested that the final rulemaking clarify which appeals are required to be made to the Forest Service. After consideration of all of the comments, the section is amended in the final rulemaking to clarify those instances when appeals are properly made to the surface managing agency.

Section 3101.8 State's or charitable organization's ownership of surface overlying federally-owned minerals.

One comment objected to the 30-day period allowed State or charitable organizations to formulate stipulations under this section of the proposed rulemaking. In response to this comment, this section in the final rulemaking has been modified to bring it into conformance with the coordination procedures used for lands under the jurisdiction of a surface managing agency other than the Bureau.

Section 3102.1 Who may hold leases.

One comment suggested that § 3102.1(b) of the proposed rulemaking unnecessarily repeats the information contained in § 3102.5–1. The comment expressed the view that the purpose of § 3102.1 has always been to furnish a qualifications listing of those persons or entities who are authorized to hold leases in accordance with section 1 of the Mineral Leasing Act, and that paragraph (b) of the proposed rulemaking does not fall within this category. The comment is adopted in the final rulemaking and paragraph (b) has been removed.

Section 3102.4 Signature.

One comment noted that this section of the existing regulations should be amended to remove reference to former Subpart 3112. The final rulemaking published in the Federal Register on May 16, 1988 (53 FR 17340), made this revision.

Section 3102.5–1 Compliance.

A large number of comments were received on this section of the proposed rulemaking. A few comments expressed concern that companies, associations, partnerships, etc., could not be responsible for all of their partners' or potential partners' actions in complying with the requirements of this section, and, consequently, would be faced with cancellation of leases if a violation occurred. The statute itself establishes the requirement. To be in compliance with section 1 of the Mineral Leasing Act (30 U.S.C. 181), it is necessary that all associations of companies, individuals, etc., ensure that their members are complying with the requirements of the law. The introductory paragraph of § 3102.5–1 of the proposed rulemaking has been adopted without change.

Another comment on this section suggested that the final rulemaking add a provision to allow the authorized officer to request information relative to compliance at any time. This suggestion has not been adopted because the Bureau of Land Management has the authority to require this information when necessary under § 3102.5–3 of the final rulemaking published on May 16, 1988 (53 FR 17340).

One comment suggested § 3102.5–1 of the final rulemaking should include the provision that submission of an offer to lease or a request for approval of an assignment constitutes certification of compliance with the regulations. This provision is included in § 3102.5–2 in the final rulemaking published on May 16, 1988 (53 FR 17340). Therefore, no change is necessary is this final rulemaking.

Several comments requested that § 3102.5–1(e) be modified to indicate that a party is determined to be in noncompliance with the Reform Act beginning on the date of the final decision of imposition of a civil penalty As discussed earlier in this preamble at § 3000.9, the interpretation of section 41 of the Act is required to be made by the Department of Justice. Section 3102.5–1(e) is adopted in the final rulemaking without amendment.

Several comments suggested that a definition of "control" be added in § 3102.5–1(f) of the final rulemaking. These comments have merit and the final rulemaking adds a cross-reference to the defintion contained in § 3400.0–5(rr) of the existing regulations. This definition, promulgated to comply with the section 2(a)(2)(A) requirements of the Federal Coal Leasing Amendments Act, 30 U.S.C. 201(a)(2)(A), meets the requirements of section 5102(d) of the Reform Act as well.

A number of comments on § 3102.5–1(f) of the proposed rulemaking questioned cancellation of a lease while an administrative or judicial appeal is pending. Since there also is an appeal provision in conjunction with a lease cancellation decision, no change has been made in the final rulemaking. Notwithstanding the concerns expressed in several comments that there may be a genuine dispute concerning either the adequacy of the reclamation performed or the civil penalty imposed, as well as a potential for invalidation of leases or transfers entered into subsequent to the failure or refusal to perform reclamation work properly, these measures are necessary to ensure compliance with section 17(g) of the Mineral Leasing Act,

and disputes can be resolved upon appeal of the cancellation.

Several comments expressed concern that the beginning of the noncompliance period for section 17(g) of the Act, as stated in § 3102.5–1(f) of the proposed rulemaking, could be interpreted as being at two different times. The final rulemaking has been amended to indicate that noncompliance shall begin on whichever date occurs first, either the date of imposition of a civil penalty or the date of attachment of a bond and that noncompliance shall end when the United States has been reimbursed for all costs incurred as a result of the specific infraction.

In response to several comments, a new § 3102.5–1(g) is added in the final rulemaking to provide a cross-reference to redesignated § 3106.1(b) of the final rulemaking, which specifies that signature on a request for approval of a record title assignment of less than 640 acres outside of Alaska (2,560 acres within Alaska) shall certify that the assignment would further the development of oil and gas. However, the Bureau may request further evidence of compliance with the provision of the Reform Act.

Section 3102.6 Agents.

Several comments on this section of the proposed rulemaking recommended that it be either clarified or removed. Most of the comments stated that it was not advantageous to corporations or entities to execute special agency agreements solely for persons attending and bidding at lease sales who assist and execute documents on behalf of a firm. One comment felt this section of the proposed rulemaking constituted a Government intrusion into the conduct of business of the private sector. This section has been removed in the final rulemaking. Section 3102.5–3 of the final rulemaking published on May 16, 1988, gives the Bureau sufficient authority to request further evidence and to review any necessary documents to determine compliance.

Section 3103.1–1 Form of remittance.

Several comments requested that this section of the final rulemaking include sight drafts. U.S. Department of the Treasury requirements prohibit the acceptance of sight drafts by any Federal agency for payments of obligations. Therefore, the final rulemaking does not include sight drafts as a form of remittance.

Several comments were received concerning the use of credit cards since no provisions for such are currently in place. The Government presently is negotiating the provisions that would in the future allow the use of credit cards for receipt of payments. The final rulemaking would allow the use of this type of payment when it is authorized and specific procedures have been developed and announced to the public.

Two comments on this section of the proposed rulemaking addressed the fact that cash was not included as an acceptable form of remittance in the proposed rulemaking. The final rulemaking does not allow remittance of cash because it is administratively difficult to monitor and handle for security reasons, particularly at competitive sales.

A few comments requested that the Bureau of Land Management be more flexible with regard to the required description of "payable to" on remittances to avoid frivolous lawsuits on technical grounds. The rulemaking identifies the correct payee name to be used for all remittances. However, any remittances made out to "BLM," "DOI," or "Bureau of Land Management" are accepted as payment and no problems have been encountered.

Section 3103.2–1 Rental requirements.

One comment on this section of the proposed rulemaking suggested that the statement in the preamble of the proposed rulemaking that the requirement that nominations and bids be accompanied by the first year's rental to ensure "serious" bids was unlikely to have any bearing on how serious bids are apt to be and, in fact, might diminish ultimate revenues available for bidding. The final rulemaking has not been changed because submission of these moneys is a measure of bidder intent, and a nomination or bid must be accompanied by the rental to allow prompt lease issuance.

Several comments suggested that allowing only 10 calendar days for curing a deficient rental in § 3103.2–1(b) of the proposed rulemaking was too short and unreasonable. One comment pointed out that the proposed rule language did not specify that the 10-calendar day period does not begin until receipt by the applicant of a notice of the deficiency. This section of the final rulemaking is amended to clarify the provision and to allow 15 calendar days from receipt of a deficiency notice.

Another comment on § 3103.2–1(b) suggested that the Bureau allow correction of errors made "in good faith." Aside from the judgmental factors involved and the creation of undue dispute, not all types of defects can be considered curable with no loss of priority, but instead must be treated on a case-by-case basis. The final rulemaking has not been amended to include this suggestion.

Several comments suggested that § 3103.2–1 of the proposed rulemaking be revised to require rental on a net acre basis instead of a gross acre basis. Section 3103.2–1(c) of the existing regulations, which was not a part of the proposed rulemaking and has been in existence for many years, requires that rentals not be prorated for undivided fractional interest lands but be payable for the full acreage in such lands. The Government charges the rental for the acreage in which it owns an interest, whether it be the entire interest or less. The comments have been considered, but no change has been made in the final rulemaking. Moreover, because of the wide variation in the fractional interest that may be held in certain lands and the difficulty of administering leases with varying mineral interest lands, it is necessary to require rental on the full acreage.

Section 3103.2–2 Annual rental payments.

One comment recommended the § 3103.2–2(i) of the existing regulations be retained in the final rulemaking. Retention of this section is not necessary because the final rulemaking provides for rental provisions "as stated in the lease". The recommendation is not adopted in the final rulemaking. Another comment suggested that the final rulemaking specify in § 3103.2–2 that rentals should not be increased for leases extended beyond their fifth year by drilling or production. Since the Reform Act requires that the rental shall not be less than $2 after the fifth year, this suggestion has not been adopted in the final rulemaking.

A few comments on § 3103.2–2(b) of the proposed rulemaking suggested that, to comply with the law, the phrase "application" as well as "offer" be included in this section and that it be reformatted in the same manner as paragraph (a) of the section to make it clearer. These suggestions have been adopted in the final rulemaking with regard to those leases "grandfathered" by the Reform Act.

Several comments were received on § 3103.2–2(b)(1) of the proposed rulemaking. One comment expressed strong concern that this section would double the annual rental rate beginning in the sixth year for leases issued under former Subpart 3112 because the final rulemaking was viewed to end the rental rate reduction from $3 to $1 per acre previously granted by the Secretary of the Interior. The comment was concerned that this increase would

discourage exploration. Because the proposed rulemaking merely applies the rental rate set by the Reform Act to leases issued under former Subpart 3112 (and would lower the present regulated rate from $3 to $2 per acre), this comment has not been adopted by the final rulemaking. The Secretary of the Interior would continue to have the authority and discretion to grant a rental rate reduction in accordance with section 39 of the Mineral Leasing Act.

Another comment on § 3103.2–2(b)(1) of the proposed rulemaking suggested that the date cited should be changed to that date when the rental increase provision actually will become effective because of the Secretary's granting a rental reduction until February 1, 1989. In response to this comment, the final rulemaking specifies the date that leases issued under former Subpart 3112 after February 19, 1982, become subject to the annual rental increase in the sixth and subsequent lease years of $2 per acre or fraction thereof.

A few comments on § 3103.2–2(b)(2) of the proposed rulemaking suggested removing the known geological structure and favorable petroleum geological province terminology. No change has been made in the final rulemaking because these two terms must continue to be recognized for all leases issued in accordance with the regulations in effect on or before December 22, 1987.

Several comments were received on § 3103.2–2(c) of the proposed rulemaking. The comments questioned the payment both of annual rental and royalty on leases assessed compensatory royalty. Most of the comments argued that the 1959 Solicitor's Opinion is in error since the compensatory royalties compensate the Department of the Interior as if the production has occurred. The comments also suggested that such double charges are inequitable and could result in termination of the lease. The Department has reviewed the issues raised by the comments. However, based on the Solicitor's Opinion, which remains in force, it is clear that both rental and royalty are due in this situation. Rental is due until a discovery is made on the lease. By paying compensatory royalty in lieu of drilling, the lessee in effect has also opted to continue rental payments. The final rulemaking makes no change in this provision.

One comment received on § 3103.2–2(d) of the proposed rulemaking pointed out a discrepancy between this section and § 3103.2–3 of the existing regulations. This suggestion has been adopted and § 3103.2–2(d) of the final rulemaking has been modified to indicate that the $5 rental rate is due beginning with the termination date of the lease. Section 3103.2–2(e) also has been modified in the final rulemaking to clarify when the $10 annual rental rate is required for reinstated competitive leases.

Section 3103.3–1 Royalty on production.

Numerous comments were received on this section of the proposed rulemaking. The majority of comments supported the 12½ percent fixed royalty rate in § 3103.3–1(a)(1), expressing the view that this flat rate would promote drilling on marginal lands, generate higher bonus bids, and would be easier to administer.

Some of the comments, however, pointed out that Congress did not alter the competitive royalty rate when it enacted the Reform Act. Since 1920, section 17 of the Mineral Leasing Act has provided that the royalty rate for competitive oil and gas leases shall be "not less than 12½ percent." Some of the comments suggested that this discretionary provision must be implemented today as it was in the past; that is, that the discretion is illusory. This provision of the law has been implemented in the past by delegating to the authorized officer the discretion to prescribe the royalty rate in the Notice of Competitive Lease Sale. While the Bureau's authorized officers in the past have prescribed a Bureau standard form rate schedule based on the rate of production, the existing oil and gas leasing regulations have not required this. The competitive oil and gas royalty rate has been interpreted in the same manner as the coal royalty rate in section 7(a) of the Act as added by the Federal Coal Leasing Amendments Act, that is, while the royalty rate cannot be lower than 12½ percent, it does not, by law, have to be higher.

A review of recent revenues from producing oil and gas leases indicates that approximately 12 percent of the producing lease accounts (3,114 of 24,109) administered by the Minerals Management Service are variable royalty rate leases. The impact of the variable royalty leases, however, is insignificant because, in calendar year 1987, of almost $1 billion in royalty revenues received from leases only $5,528,658 was derived from the portion of royalty above 12½ percent from those leases with a variable royalty rate schedule. This is much less than 1 percent of the royalty revenues received. Since 50 percent of the lease revenues go to the States, and 40 percent goes to the Reclamation Fund, only $552,865 from royalty revenues remains for the Government to administer the inspection program for all Federal leases and to determine whether well production figures are being properly allocated. The flat rate simplifies this complex task. In addition, higher royalty rates on competitive leases may direct more activity toward the noncompetitive leasing program in which leases, by statute, have a primary term of 10 years with a fixed 12½ percent royalty rate. The Reform Act's deemphasis of the noncompetitive leasing program through increased incentives in competitive leasing activity is preferable and in the public interest in accordance with the provisions of the Reform Act.

The Bureau is mindful of the comments expressing concern with the adoption in this final rulemaking of a fixed royalty rate of 12½ percent and will continue to study this matter. Various suggestions that have been made and may be considered for future use by the Bureau include rate differentials based on the existence or level of production within a geographic area, or a different flat rate royalty such as a 16⅔ percent royalty in lieu of the 12½ percent royalty rate. The Department of the Interior will continue to consider alternatives from all sources. In the course of considering any further change in the regulations with respect to the royalty rates, public comment will be sought.

Several comments on § 3103.3–1(a) (2) and (3) of the proposed rulemaking expressed the view that the royalty rate should not be increased when leases are reinstated. The Mineral Leasing Act requires increased royalty for leases reinstated under the Class II procedures. The Interior Board of Land Appeals has held that Congress intended a penalty provision to apply to reinstated leases. The final rulemaking adopts the proposed language with no change.

A number of comments noted the typographical error in § 3103.3–1(b) of the proposed rulemaking. The final rulemaking corrects the word "quality" to read "qualify."

Section 3103.3–2 Minimum royalties.

Several comments were received on this section of the proposed rulemaking. One comment suggested retaining the language of the existing regulation at the end of paragraph (a) that requires payment of the difference if the actual royalty paid during any year is less than $1 per acre. The final rulemaking clearly specifies under paragraph (a)(1) that a minimum of $1 per acre is payable. In addition, the lease terms contain this language. No change has been made and the final rulemaking is adopted as

proposed. A few comments suggested that the final rulemaking should specify that the lessee receive notification from the authorized officer that the lease is subject to minimum royalty. Royalty is paid to the Minerals Management Service, and it determines whether sufficient royalties are paid to meet the minimum royalty due. The final rulemaking adopts the proposed rulemaking with no change.

Section 3104.1 Bond obligations.

Several comments were received on this section. Some of the comments suggested that the time for requiring bond coverage should not be limited to the commencement of surface disturbing activities related to drilling, but should start at the beginning of any surface disturbing activities. A few of the comments indicated that any surface disturbing activities related to any aspects of lease development should require bonding. The first sentence of § 3104.1(a) of the proposed rulemaking revised the existing regulation to change the time when a bond is required: From the commencement of surface disturbing activities related to drilling operations rather than from the commencement of drilling operations. Lease operations are conducted in accordance with the operations and surface use activities contained in the approved Application for Permit to Drill. The language of the proposed rulemaking, which is adopted in the final rulemaking, will ensure that any surface disturbing activities requiring reclamation will be bonded. No entity may undertake any surface disturbance requiring reclamation, such as road construction, without an approved permit to drill. Building roads on Federal surface without approval would result in trespass proceedings. No change is made in this section of the final rulemaking.

Another comment on § 3104.1(a) of the proposed rulemaking recommended that holders of operating rights (sublessees) be removed as parties who may furnish bonding coverage since the current Bureau of Land Management adjudication procedures for handling operating rights transfer approvals would make it difficult to accept bonds from those parties without extensive title review. No change is made in the final rulemaking since any party furnishing bond coverage has the burden and responsibility to the Bureau for the lease activities being conducted.

One comment on § 3104.1(c) of the proposed rulemaking questioned the elimination of the acceptance of cash for a personal bond. Cash is eliminated as an acceptable personal bond because of guidelines from the Federal Reserve Board as well as Bureau field office concerns about security problems in accepting and handling large sums of cash. Potential obligors should be capable of converting cash easily into either a cashier's or certified check or a certificate of deposit, all of which are acceptable forms of personal bonding.

Several comments commended the proposed expansion of types of acceptable personal bonds in § 3104.1(c) to include certificates of deposit and letters of credit. One comment indicated that this provision would greatly assist operators in obtaining the guarantees needed for reclamation work required for disturbed areas. A few comments were adverse to the acceptance of letters of credit and expressed the view that such letters of credit would be inadequate to ensure that the Bureau would be able to recover damages after the expiration of any fixed term of the letter of credit. The comments suggested that the specific term of a letter of credit could easily result in inadequate coverage after the term expired and would be difficult to manage. However, other Federal agencies accept letters of credit without difficulties. Accordingly, in the final rulemaking letters of credit are an acceptable form of security for a personal bond.

Another comment recommended that only letters of credit with an indefinite term be considered acceptable to accommodate leases that become indefinite in duration upon completion of a producing well. The final rulemaking is modified to require that letters of credit shall include language requiring automatic renewal for one-year periods in the absence of specific notice to the proper BLM office at least 90 days prior to the expiration date of the letter of credit or prior to the intent not to renew. Other changes adopted in this section of the final rulemaking make it consistent with that contained in 30 CFR 800.21(b), which contains requirements used by the Office of Surface Mining for letters of credit. A final comment recommended that letters of credit should be issued by Federally insured institutions in the same manner as certificates of deposit. This suggestion has been adopted in the final rulemaking.

One comment received on § 3104.1 of the proposed rulemaking expressed concern that operators may be required to furnish bonds to both the Bureau of Land Management and the Forest Service for the same lease obligation. The commenter requested that the Bureau and Forest Service provide a means whereby a single statewide or nationwide bond would cover compliance with all lease terms and the reclamation requirements of both surface agencies. The Department of the Interior is committed to not requiring duplicate bonding coverage whenever possible, and will coordinate with the Department of Agriculture in implementing each agency's respective responsibilities under the Reform Act. The Bureau of Land Management will continue to be the official office of record for accepting and maintaining bonds associated with Federal oil and gas leases and operations thereon. The Bureau, in accordance with the interagency agreement with the Forest Service, also would consider any Forest Service recommendations to increase bond coverage as may be required by § 3104.5. Final determination as to the method by which the Secretary of Agriculture implements his/her responsibilities under the Reform Act, however, will be made by that Secretary. Accordingly, no change has been made in the final rulemaking.

Another comment on § 3104.1 of the proposed rulemaking requested that the final rulemaking implement the Bureau of Land Management Director's Task Force recommendation that "piggybacking" of Federal and State bond requirements be permitted in order to preclude unnecessary duplicate coverage for reclamation requirements. The final rulemaking provides the minimum requirements acceptable to the Department of the Interior. Any implementation of the concept of allowing coverage for both Federal and State concerns related to development of oil and gas leases can be addressed only through individual agreements between the Bureau and the State concerned. The Bureau would favor such alternate bonding proposals for any State that would desire to pursue such arrangements, provided that both parties needs are met, but cannot make such commitments at this time.

For consistency with the bonding provisions contained in § 3104.1(a), the bonding requirements for geothermal resources leasing contained in § 3206.1–1 also are amended in this final rulemaking.

Section 3104.2 Lease bond.

Two comments received on § 3104.2 of the proposed rulemaking recommended that holders of operating rights (sublessees) be eliminated as parties who may furnish lease bonds. No change is made in the final rulemaking since the party furnishing bond coverage has the responsibility for activities related to lease development and

reclamation, and a holder of operating rights may be such a party.

A few comments on this section also requested that the final rulemaking add specific provisions to allow phased release of bonds when reclamation has progressed to a point where continuation of the full bond amount is no longer necessary. Since current Bureau policy allows phased release of bonds in the manner recommended no amendment is needed in the final rulemaking. Nothing in the rulemaking prohibits reducing bond amounts through a phased release as special conditions may warrant.

One comment suggested that § 3104.2 be modified to require attachment of any operator's bond before attaching a lessee's bond. This recommendation is not adopted in the final rulemaking since a default in performing any lease obligation must leave the Government in a position to pursue all possible options to remedy the situation. Lessees remain free to pursue other civil remedies against non-performing operators.

A few comments requested that the last sentence of § 3104.2 of the proposed rulemaking be clarified to specify what documentation is required in order for an operator to use a lessee's or sublessee's bond. This suggestion is adopted and the final rulemaking has been clarified. The specific documentation usually required is a consent from the surety to include the operator under the coverage of the lessee's or sublessee's bond.

Section 3104.4 Unit operator's bond.

Two comments on this section of the proposed rulemaking suggested elimination of the duplication of § 3104.4 and Subpart 3184. This suggestion has been adopted in the final rulemaking by the removal of Subpart 3184. Two comments recommended revisions to simplify and clarify the language in § 3104.4. In response to these comments, the final rulemaking revises this section and removes § 3184.1. For consistency, the final rulemaking also removes § 3184.1 concerning geothermal resources unit bonds, and adds a new § 3206.6 containing revised language consistent with the provisions in amended § 3104.4.

Section 3104.5 Increased amount of bonds.

Several comments on § 3104.5(a) of the proposed rulemaking expressed concern that requiring a bond in the full amount of the estimated costs of plugging the well and reclaiming the involved disturbed area, if any demand for payment has occurred within the past 5 years, is too stringent. Another comment suggested that increasing bond levels to an adequate amount only after an operator has failed to fulfill lease obligations is not a responsible Bureau practice. Some comments recommended that the 5-year period should be prospective and not retrospective to events preceding this rulemaking, and that the authorized officer should have the discretion not to increase the bond amount. The Reform Act requires the Secretary of the Interior to ensure that adequate bond coverage is provided. An operator's refusal to plug a well or reclaim the surface is a serious breach of the regulations that casts doubt on the integrity of that operator. Therefore, in such circumstances a very firm uniform national policy is appropriate.

Another comment on this section of the proposed rulemaking suggested that the bond coverage for full reclamation be required in all cases. The Reform Act does not require such a bond, but does require the Secretary to ensure that bonding is adequate. The regulation language accomplishes the requirement of the law and the proposed rulemaking is adopted with only minor technical changes.

Two comments on this section also recommended that the authorized officer be able to increase bonding for any actions other than an Application for Permit to Drill. Section 3104.5(b) provides this authority.

Some of the comments received on § 3104.5(b) of the proposed rulemaking noted that a notice received from the Minerals Management Service that there may be uncollected royalties due would be grounds for the bond amount to be increased even if such a notice is later determined to be incorrect with no final determination occurring. The Bureau agrees with these comments, and the final rulemaking is modified to indicate that such a notice from the Service must have determined that uncollected royalties are due prior to requiring any increased bond amount for such infraction.

Several comments on § 3104.5 expressed the view that the provisions of this section should not be applied during the pendency of an appeal. The payment under a bond would not be required until a decision is rendered under any administrative appeal taken and when all such appeal rights have also been exhausted. The Bureau would not expect payments to be made prior to that time.

Section 3106.1 Transfers, general.

Numerous comments were received on § 3106.1 concerning approval of assignments and transfers. Many of the comments addressed the first two sentences of § 3106.1(a) of the proposed rulemaking. Many comments raised the point that the proposed rulemaking did not provide for discretionary approval of record title assignments for separate zones or parts of legal subdivisions. The Bureau's experience with these types of assignments is that they are never approved. In order to avoid implying that these types of assignments may be approved, the final rulemaking specifies that the Secretary is exercising his or her discretionary authority, under the statute and this rulemaking, to disapprove such record title assignments. The option for lessees to execute transfers of non-record title interests is unaffected and is believed sufficient for the conduct of business.

The language in § 3106.1(a) of the proposed rulemaking was incorrect as to the difference between the terms "transfer," "assignment," and "sublease." Transfers include both assignments and subleases. An assignment refers only to a transfer of record title interest, and a sublease refers to a transfer of operating rights interests. The definition of the term "transfer" in § 3100.0–5(e) of the final rulemaking published on May 16, 1988 (53 FR 17340), clarifies use of these terms. The approval requirements in § 3106.1(a) of this rulemaking relate to assignments of separate zones or deposits and parts of legal subdivisions, not to subleases. Subleases of operating rights interests may be disapproved only for lack of bonding or qualifications of transferees.

A few commenters expressed the view that the intent of the Reform Act allowing the Secretary discretion to disapprove assignments of less than 640 acres (2,560 acres in Alaska) was to eliminate the activities of "forty-acre merchants" who subdivide leases with no intent to develop. The commenters felt that the discretionary authority should be exercised in such a way as not to unduly inconvenience legitimate operators when assignments resulting from farmouts, spacing unit restrictions, options, etc., would further development. One comment suggested that the authorized officer should normally assume that the assignment was legitimate and would further the development of oil and gas, absent evidence to the contrary. This suggestion has been adopted in the final rulemaking with creation of a new paragraph (b), which establishes that execution and submission of the request for approval of an assignment will certify that the assignment will further the development of oil and gas. In addition, in accordance with the

provisions in § 3102.5–3 of the May 16, 1988, final rulemaking, the authorized officer may require additional information and statements, from both the assignor and assignee, where there is any question whether the assignment will further the development of oil and gas.

Some of the comments suggested that the standards that would constitute "to further the development of oil and gas" be specified in the final rulemaking, if only by example. Another comment took an opposite position, recommending broad discretion on the part of the authorized officer. Given inclusion in the final rulemaking of the provision for self-certification that assignment will lead to development, described above, and recognizing the wide variety of legitimate reasons for making assignments, it has been determined that the purposes of the Act could be best carried out by leaving unspecified the standards that would be applied to determine whether a particular assignment would further development. This will afford the authorized officer the greatest latitude for approval of assignments.

Many comments suggested that the final rulemaking include a specific requirement, echoing the Reform Act, that, except when the assignment is determined not to be in accordance with applicable law, approval of the assignment be required within 60 days of receipt of the request for approval. This suggestion is not adopted in the final rulemaking. The requirement is specified in the Act, and no purpose would be served by repeating the requirement in rulemaking. The Bureau of Land Management State Offices are committed to act in a timely manner on all assignments and transfers in accordance with this requirement of the Reform Act.

Sections 3107.2–2 Cessation of production.

A number of comments were received on § 3107.2–2 concerning the additional language added in the proposed rulemaking to clarify the 60-day period for reworking a well upon cessation of production. Most of the comments expressed the view that the added language would eliminate uncertainty and misinterpretation. A few comments, however, requested that the authorized officer be allowed discretion to waive the 60-day period. The Mineral Leasing Act (30 U.S.C. 226(i)) requires the 60-day period. The final rulemaking, therefore, has adopted the language of the proposed rulemaking without change

Section 3107.2–3 Leases capable of production.

Several comments received on § 3107.2–3 of the proposed rulemaking suggested that the final rulemaking be amended to provide discretion to the authorized officer due to the current depressed price of oil. An application for a suspension of production and/or operations is the appropriate vehicle for seeking relief in these situations. Another comment on this section expressed the view that a lease capable of production should not terminate due to a failure to produce from a shut-in well. This would be true unless the authorized officer orders the lease into production. Accordingly, the proposed rulemaking is adopted without change.

Section 3107.7 Exchange leases—20-year term.

Section 3107.8 Renewal leases.

Several comments expressed concern that the proposed rulemaking required a greater obligation by applicants for exchange and renewal leases under §§ 3107.7, 3107.8–1(a) and 3107.8–3(a) to show compliance with reclamation requirements than is required under § 3102.5–1(f). The comments suggested that reference to certification of compliance under § 3102.5–1 sufficiently includes compliance with reclamation standards. The final rulemaking adopts this suggestion.

A few comments suggested removal from § 3107.8–1(a) of the final rulemaking of the requirement that sublessees be required to join in applications for renewals of leases, because ownership of operating rights is no longer adjudicated as part of the Bureau's approval process. This suggestion is valid and the requirement has been removed in the final rulemaking.

Several comments objected to the requirement in § 3107.8–1(a) of the proposed rulemaking for applicants seeking renewal of a lease to show that all moneys due to the United States have been paid. This requirement does not represent any change from the requirement contained in the existing regulations. Such a showing by applicants has been routinely made in the application by including a statement that all moneys due have been paid. This requirement has not presented any problem to date and has been routinely complied with by those holding rights to renewal leases. Accordingly, no change is made in the final rulemaking.

Section 3108.1 Relinquishments.

Several comments recieved on this section of the proposed rulemaking requested clarification of the use of the term "suspension." While this term remains unchanged from that contained in the existing regulations, a technical amendment is made in this section of the final rulemaking to clarify that a suspension relates to an authorized shut-in of a well.

Section 3108.3 Cancellation.

One comment received on § 3108.3(a) of the proposed rulemaking objected to the provision allowing cancellation of a nonproducing lease for failure to comply with any provisions of the law, indicating that such notice would be insufficient. This comment has not been adopted in the final rulemaking since this provision is consistent with the language of the Mineral Leasing Act, both prior to and subsequent to the enactment of the Reform Act. The proposed rulemaking spells out the specific requirements of the law that had previously been incorporated only by reference in § 3108.3(a) of the existing regulations. Paragraph (a) of this section is adopted with only a technical change to refer specifically to section 31(b) of the Mineral Leasing Act.

Another comment on this section contended that the proposed revision broadened the powers of the Bureau for cancellation by court proceedings of a lease without a productive well. The distinction between administrative and judicial cancellation prior to enactment of the Reform Act was based on whether the leased lands were known to contain valuable deposits of oil or gas. The Reform Act changed the provision to make no distinction concerning whether a lease contains a well capable of production. The statutory language in the Reform Act encompasses both actual and allocated production by providing protection to communitized and unitized leases. The comment is not adopted in the final rulemaking since the Reform Act clearly changes the requirements for administrative cancellation. As a practical matter, any cancellation proceeding will generate the due process rights for any affected lessee to appeal to the Interior Board of Land Appeals and subsequent judicial review. Thus, no lease cancellation would become final without judicial review so long as the lessee pursues his or her rights.

Another comment on this section of the proposed rulemaking objected that a lease may be subject to cancellation if a partner or co-lessee has acquired an interest in the lease in violation of section 17(g) of the Mineral Leasing Act, which prohibits issuance of a lease or approval of a lease assignment to any

party not in compliance with the reclamation requirements after due notice. Section 3102.5–1 clearly meets the intent of the Reform Act to prevent improper acquisition of lease interests by a party through lease issuance, assignment, or sublease in violation of reclamation requirements. However, the lease interest of an innocent co-lessee in such a situation would not be subject to cancellation. The final rulemaking does not adopt this comment.

As a result of the Bureau's review of the comments on § 3108.3, and a review of the language of the proposed rulemaking and the cancellation provisions of the law, it has been determined that the proposed rulemaking did not clearly implement the Secretary of the Interior's oil and gas lease cancellation authority. The final rulemaking has, therefore, been revised by adding a separate paragraph setting out the administrative cancellation authority in section 31(b) of the Mineral Leasing Act (30 U.S.C. 188(b)), as amended by the Reform Act, for breach of the lease, another paragraph setting out the judicial cancellation authority in section 31(a) of that Act (30 U.S.C. 188(a)), for breach of the lease, and a separate paragraph setting out the judicial cancellation and divestiture authority in section 27(h)(1) of that Act (30 U.S.C. 184(h)(1)), for interests held in violation of the Act.

Section 3109.2 Units of the National Park System.

A comment requested a technical change in this section of the existing regulations to revise the terminology relating to leasing requirements in National Park areas in order to be consistent with the amendments made in § 3100.0–3(g)(4) and those previously made in § 3100.0–3 (a)(2) and (b)(2) of the final rulemaking of May 16, 1988 (53 FR 17340). This suggestion is adopted in the final rulemaking.

Part 3110—Noncompetitive Leases

Section 3110.1 Lands available for noncompetitive offer and lease.

Section 3110.2 Priority.

Many comments were received on §§ 3110.1 and 3110.2 of the proposed rulemaking. The comments addressed three primary issues: Whether a noncompetitive offer can be filed prior to a competitive sale and retain priority in the event the parcel is not competitively sold; the nature of the postsale noncompetitive process; and the period, if any, during which offers are considered simultaneously filed after the competitive process.

Comments were received on all sides of these questions and represented a broad spectrum of opinion regarding the nature of the noncompetitive process under the Reform Act. One group of comments emphasized the postsale simultaneous aspect; another group emphasized the desire for presale noncompetitive filings leading to a priority standing that could be maintained in the event the parcel is not sold competitively; and a third group emphasized the pre-eminence of the competitive program over the noncompetitive leasing process. A few comments strongly supported presale parcel priority, and an almost equal number of comments opposed it. Numerous comments addressed the length of the "simultaneous" filing period following the competitive offering. Several comments wanted one day, and an equal number of comments requested a period from 10 to 30 days, and others expressed a desire for 5 days. In addition, there were a few comments that suggested elimination of the postsale noncompetitive process altogether, recommending the substitution of either another competitive sale using noncompetitive lease terms or the recycling of any parcels which received multiple noncompetitive offers directly back into the competitive system. One comment suggested a return to the former automated simultaneous oil and gas leasing system, the lottery.

Several comments concerned the posting of results of noncompetitive offers, an issue that also is pertinent to the nature of the postsale process. Some comments requested that results be posted, but others suggested that results not be posted. The issues raised by many of these comments can be resolved by looking at the intent of the legislation. Clearly the legislation is designed to emphasize the competitive process. In fact, the Congress has confirmed this emphasis and restated its desire to depart from the former simultaneous leasing process and to de-emphasize noncompetitive leasing. The Bureau is persuaded by the test sales, and the comments that have been received, that the competitive oral auction is an efficient and desirable method of leasing the public's onshore oil and gas resources.

The legislation also is clearly designed to provide a noncompetitive reward for risk-taking in frontier areas. This concept rewards exploration activity rather than rewarding success at a game of chance.

To the extent that the noncompetitive choices are between a simultaneous program based on chance that only rewards speculation and a program that rewards risk-taking based on exploration, it is clear that the intent of the legislation is toward the latter. It is vital, also, to recognize that the former simultaneous leasing process was not a creation of Congress, and that the former process was not confirmed in any way by the Reform Act. Rather, the simultaneous process had been instituted solely by regulation and was conducted for administrative convenience due to conditions that existed in the late 1950's. It is the intent of the Bureau that the regulations implementing the Reform Act follow these guidelines: emphasis on competitive rather than noncompetitive leasing, and emphasis on a noncompetitive reward for risk-taking in frontier areas rather than risk-taking in a game of chance.

The Bureau of Land Management has taken certain steps in § 3110.2 of the final rulemaking to minimize the role of postsale simultaneous filings, and particularly to deinstitutionalize the process. First, a period of a single day is specified, immediately following the end of the competitive process, in which offers will be considered simultaneously filed. Since business and office hours vary somewhat from Bureau office to office, the times of day will be specified in each Notice of Competitive Lease Sale or List of Lands Available for Competitive Nomination. In furtherance of the idea that the simultaneous period is not special, relative to the following or subsequent days after this single day, but rather is simply a period in which many offers are expected, the Bureau has made a deliberate decision to not publish and provide results for that period.

In response to numerous comments, the Bureau has amended the final rulemaking in § 3110.2(a) to provide that offers received after the one-day simultaneous period shall be prioritized as of the time received, rather than as of the day received. This system predates the former simultaneous system, has always been used for previous over-the-counter offers, and is the Bureau's normal practice of doing business. As such, the provisions do not provide any special status to any class of noncompetitive offer.

Several comments expressed the view that the Bureau should maintain the proscription in former Subpart 3112 against multiple filings for the same parcel by the same individual or individuals with a common interest. The proposed rulemaking was silent on this matter. The final rulemaking also is

intentionally silent. Enforcement of the proscription was one of the hallmarks of the former simultaneous program, and because of its complexities, proved to be a major source of litigation and a great drain on public resources. The Reform Act was intended to remove the more valuable lands from the noncompetitive arena, thereby leaving far less concern regarding multiple filings. Because circumstances have changed, the Bureau is no longer persuaded that costly enforcement of the multiple-filing rules is in the public interest.

All noncompetitive offers, whether filed before or after the competitive offering, have the same requirements, including the same terms, configuration, acreage requirements, and costs, that is, submission with the offer of the first year's rental of $1.50 per acre and a nonrefundable $75 filing fee. The final rulemaking continues the 10,240-acre maximum limit, a ten-year term, and other configuration requirements contained in § 3110.3–3. If the lands are sold competitively, competitive lease terms will apply, with the noncompetitive offer rejected and the rental submitted refunded.

Beginning on January 3, 1989, § 3110.1 of the final rulemaking provides that all unleased lands will be available for noncompetitive lease offer prior to their competitive offering, with two exceptions. Lands in terminated, expired, relinquished, or canceled leases will not be available for the filing of a noncompetitive offer until one year from the date of lease termination, expiration, cancellation, or relinquishment and also from the date of posting of a nomination or sale notice until the lands have been through the competitive offering without receiving a nomination or a bid, as appropriate.

The public shall take notice that under § 3110.1(a)(1) noncompetitive filings prior to a competitive auction will not be permitted until after January 2, 1989. It should be clearly understood that all lands still must be subjected to competition before being leased. An offer filed for lands prior to those lands being posted in a List of Lands Available for Competitive Nominations or a Notice of Sale will trigger processing of the lands to determine availability and stipulations, the placement of the parcel in the competitive sale process and, failing its receiving a bid, leasing it to the priority offeror. Priority will be established as of the day the offer was properly filed and will have seniority over subsequent offers, including any offers filed following the sale.

Many comments dealt with ambiguities regarding when lands would be available for filing of noncompetitive lease offers following competition. The final rulemaking is amended in § 3110.1 to make it clear that lands are available noncompetitively the first business day after the sale, or where formal nominations are used the first business day after the posting of the Notice of Competitive Lease Sale. Other comments objected that the term, "bid," is imprecise, preferring the phrase "bid less than the national minimum". The term is defined in § 3000.0–5(k) of this final rulemaking, and there is no need to redefine it.

There were several comments and questions on § 3110.2(a), which dealt with offers filed between December 22, 1987, and the promulgation of this final rulemaking. Some comments questioned the meaning of the phrase "lands then available for noncompetitive leasing." Others maintained that, prior to the promulgation of final regulations, no lands were available for noncompetitive filing. No distinction is now made in the final rulemaking between offers filed between the date of the Reform Act and this final rulemaking, and noncompetitive offers filed after January 2, 1989, and prior to the competitive offering of such lands. Regular noncompetitive offers had been routinely accepted for filing with priority up to the date of the Reform Act, and the Act did not prohibit the filing of such offers, but required that all lands including those contained in such filings be first exposed to competition. The Bureau made no attempt to halt such filings and, under statute, has exposed them to competition, issuing competitive leases where a bid was received and issuing a noncompetitive lease to the priority filer when no bid was received. The public should note that these filings will not be accepted between June 12, 1988, and January 2, 1989, to provide all parties adequate notice to this provision in the final rulemaking. Offers filed before June 12, 1988, will receive priority and, unless a competitive bid is received for such lands, a noncompetitive lease will be issued to the priority filer, all else being regular.

Numerous comments were received on § 3110.2(b) of the proposed rulemaking. The reference to priority as of the time of filing, remains in the final rulemaking. However, the meaning of the term "noncompetitive offers" is broadened in the final rulemaking to include offers for all available lands outside the competitive sale process.

The two sentences in § 3110.2(b) of the proposed rulemaking referring to conflicting offers have been revised in this final rulemaking to specify that the period in which all offers will be considered simultaneously filed is the single business day following an oral auction or following the posting of a Notice of Competitive Lease Sale when formal nominations are used. Offers received on subsequent days shall receive priority as of the time of filing, e.g., an offer filed at 10:15 a.m. will have priority over an offer filed at 10:16 a.m.

The last sentence of § 3110.2(b) of the proposed rulemaking has been modified to specify that offers will not be available for public inspection the day they are filed, but the final rulemaking is purposely silent as to when after that time such offers are available for public review. This change is necessary because of the large volume of offers which may be received on that day. While it is the Bureau's policy to make public records available as soon as practicable, it is not appropriate to specify a certain time for availability which could conflict with the orderly processing of such offers. Many comments expressed the need for confidentiality of offerors prior to an auction. As a matter of practicality, offerors have many means to accomplish anonymity.

Several comments on § 3110.2(c) of the proposed rulemaking questioned the concept of allowing noncompetitive offers pursuant to an opening order. In the final rulemaking, lands in an opening order or other notice may be available for noncompetitive offer depending on their status vis-a-vis the competitive process. Section 3110.2(c) of the proposed rulemaking is, therefore, retained and revised as § 3110.1(a)(2) in the final rulemaking to cover such special situations.

Section 3110.2(d) of the proposed rulemaking led to a great deal of confusion as indicated in several comments. The proposed language referred only to simultaneous applications received under former Subpart 3112. The provision is designed to address and handle a quirk in that former program whereby an application was drawn in priority, the lease offer was refused (rejected), and a reselection of another priority applicant was made. For many parcels, this process has been repeated endlessly resulting in much wasted effort with no lease yet issued. The Bureau is still executing cyclical reselections for simultaneous parcels first drawn in 1983, and has hundreds of such lease parcels, through late 1987, which have not been accepted by an applicant for lease issuance. The proposed rule was designed to allow one more reselection cycle after the effective date of this final rulemaking for

each such "unclaimed" parcel, after which all remaining applications are to be considered rejected without further notice. Rentals for these applications were refunded long ago. The provision will not apply to over-the-counter offers that were made subsequent to enactment of the Reform Act and those offers that are filed under this final rulemaking. Accordingly, this provision is amended to clarify the provision and is redesignated in the final rulemaking as § 3110.2(b).

Section 3110.3–1 Duration of lease.

One comment on this section of the proposed rulemaking concerning the length of the primary term for competitive and noncompetitive leases suggested a 10-year competitive term and 5-year noncompetitive term. Another comment suggested keeping the primary term for noncompetitive leases at 10 years but requiring a well to hold the lease beyond 5 years. The final rulemaking has not adopted these suggestions since the lease terms are clearly established by law.

Section 3110.3–2 Dating of leases.

Some comments suggested that the proposed rulemaking overlooked the requirement for lease issuance within 60 days of the date the first qualified applicant is identified, and recommended that this be included in the final rulemaking. The time period is specified in the Reform Act, and does not need to be repeated in regulations. The final rulemaking does not adopt this suggestion. The Bureau, however, is committed to act in a timely manner on all lease actions to meet this requirement of the Reform Act.

Section 3110.3–3 Lease offer size.

Several comments were receive on § 3110.3–3 of the proposed rulemaking. Most comments favored the minimum size specified in the proposed rulemaking for a public domain lease offer, and commended the retention of the maximum size of 10,240 acres within a 6-mile square. One comment, however, suggested allowing an offer for less than 640 acres or 1 full section, whichever is less, rather than whichever is larger. This comment recommended that since some irregular sections are less than 640 acres, the final rulemaking should indicate that a lease offer may be made on all Federal lands available in a section. Another comment stated that the provision in the proposed rulemaking that an offer may include less than all available lands in a section if the offer exceeds the minimum 640-acre provision contradicts the first sentence within the same paragraph. The final rulemaking does not adopt these two comments. The intent of the rule is to promote efficient resource development by requiring leases to be formed in reasonably large, compact blocks. If an irregular section contains more than 640 acres, the offer must include the entire section, thus, the requirement in the rule of "larger" rather than "less". If the section of land is less than 640 acres, any contiguous available lands must be included, unless the offer contains other available lands which bring the lease offer to at least 640 acres.

Another comment on § 3110.3–3(a) of the proposed rulemaking suggested that the exception to the 640-acre minimum requirement for noncompetitive offers filed on a parcel offered by the Bureau in a competitive lease sale should be limited to the time period when the description by parcel number is required under § 3110.8–1 of the proposed rulemaking, which is redesignated § 3110.5–1. This suggestion is adopted in the final rulemaking, and this exception is moved to the end of paragraph (a) of § 3110.3–3 for clarity.

Section 3110.4 Requirements for offer.

A Bureau of Land Management review of §§ 3110.4, 3110.5, 3110.6, 3110.7, and 3110.8 of the proposed rulemaking recognized that these sections were not in the appropriate order to follow the logical sequence of actions when a noncompetitive offer is filed. The final rulemaking is amended to place the sections required in this subpart in the correct order of events.

Section 3110.7 of the proposed rulemaking, redesignated § 3110.4 in the final rulemaking, received several comments expressing the view that the word "shall" in the first sentence seems to require use of the current lease form. The comments suggested that this requirement conflicts with § 3110.5(d) of the proposed rulemaking, redesignated as § 3110.7(e) in the final rulemaking, in which a form not currently in use shall be allowed, unless such lease form has been declared obsolete by the Director prior to the filing. This suggestion is not adopted in the final rulemaking. The Bureau is completing revisions to the lease form to conform to the requirements of the Reform Act. The revised lease form is expected to be available for public use soon after this final rulemaking is published. Until the revised lease form is available, and sufficient time has been allowed for general circulation, existing lease forms will be acceptable for filing noncompetitive lease offers. The Bureau will publish a notice in the Federal Register (anticipated in July 1988) specifying the acceptable lease form and will give interested parties a reasonable time period in which to obtain them before declaring the previous lease form obsolete. The provision relating to the lease form in paragraph (d) in § 3110.5 of the proposed rulemaking, redesignated as § 3110.7 in the final rulemaking, is revised and placed in a new paragraph (e), but certain language is retained in the final rulemaking in the event that future modifications or changes to the lease form are necessary.

One comment on § 3110.7 of the proposed rulemaking, redesignated § 3110.4 in the final rulemaking, suggested that in order to save paperwork only one original lease form should be required as opposed to the requirement of an original and 2 copies. This recommendation is not adopted in the final rulemaking. Each offer to lease may eventually mature into a lease. Accordingly, an original and 2 copies of the offer are necessary to provide sufficient copies for the lessor, the lessee, and the surface managing agency.

Another comment on this section recommended that the phrase "or attorney-in-fact" be added after the term "authorized agent" in paragraph (a). This suggestion is not adopted since an attorney-in-fact is an agent.

A few other comments on paragraph (a) of this section of the proposed rulemaking suggested that the phrase "by a nonrefundable application fee of $75 and the first year's rental" be clarified. The commenters expressed the view that the language as proposed implies that the first year's rental is nonrefundable. It was not intended that noncompetitive rentals would be subject to forfeiture. The final rulemaking has been modified to make this clear.

Several comments requested clarification or correction of references to §§ 3103.2–1(a) and 3103.3–3(c) in § 3110.7(b) of the proposed rulemaking, redesignated in the final rulemaking as § 3110.4(b). The reference to § 3103.2–1(a) is correct. Offers deficient in the first year's rental by not more than 10 percent or $200, whichever is less, shall be acceptable. The reference in the proposed rulemaking to § 3103.3–3(c) was incorrect, and is corrected in the final rulemaking to specify § 3110.3–3(c), which addresses curable defects of an offer that exceeds the 10,240-acre maximum size by not more than 160 acres. No loss in priority to an offer to lease would occur in these two instances, provided that the requirements are satisfied within the time allowed in these regulations.

Several comments on this section raised questions concerning the provision for a correction of an offer to lease. One comment requested clarification as to what circumstances would prompt the authorized officer to request a correction to an offer. Another comment stated that correction of an offer is a very broad notion, and that not all corrections should result in a new priority date being set as of the date the correction has been made. The effect of corrections on the amount of filing fees required also was questioned. The intent of the regulation is to allow correction of minor errors in an offer, if there is no intervening offer, which otherwise would cause a rejection of the offer. Curable defects with no loss in priority will be allowed only in those instances specified in §§ 3103.2–1(a) and 3110.3–3(c) of the final rulemaking. No new filing fee would be required if the offer is acceptable with the corrections made.

Several comments objected to the provision in § 3110.7(e) of the proposed rulemaking, redesignated in the final rulemaking as § 3110.4(e), which requires that all offers to lease should name the United States agency from which consent to the issuance of a lease shall be obtained. The comments suggested that the Bureau can more easily identify the surface managing agency. The Bureau recognizes that this identification may create some burden to offerors. However, where title information for the mineral interest is uncertain on Bureau records and a title abstract is needed, identification of the surface managing agency expedites processing of lease offers. The Bureau will continue to request this information for lands nominated through filing of a noncompetitive offer or an informal expression of interest prior to inclusion of the lands in a competitive offering. Inclusion of the information on the lease form is not mandatory for a noncompetitive offer and will not result in a loss of priority. The language of the proposed rulemaking is adopted without change.

Section 3110.5 Description of lands in offer.

A large number of comments was received on § 3110.8–1 of the proposed rulemaking, redesignated § 3110.5–1 in the final rulemaking, concerning the requirement that applicants making noncompetitive offers during the month of the noncompetitive process be required to describe the lands only by a single parcel number as it appeared in the List of Lands Available for Competitive Nominations *and* the Notice of Competitive Lease Sale. One comment pointed out that the "and" requirement would be impossible to meet where the direct sale method is used and there is no List of Lands Available for Competitive Nominations. Additionally, the comments suggested that if the parcel numbers were not the same on both the List of Lands Available for Competitive Nominations and the Notice of Competitive Lease Sale, even more confusion could result. The final rulemaking corrects this defect in this section, redesignated as § 3110.5–1, to indicate that the parcel number to be used will be that number as specified in the notice *or* list. When the nomination process is used, internal Bureau procedure will require that the same parcel number appearing on a nominations list also must be used on the corresponding Notice of Competitive Lease Sale.

Other comments on this section objected to the phrase, "the end of the month of the competitive process." The Bureau concurs that this terminology is ambiguous. The final rulemaking has been amended to specify that the period required for use of the parcel number (the parcel number period) in submitting lease offers commences on the day following the oral auction, or where formal nominations are used, the day following the posting of the sale notice, until the end of that same month.

Several comments on this section also questioned the rationale for limiting the noncompetitive offer to a single parcel or for requiring that those offers filed within the parcel number period must retain the configuration contained in the nomination lists and sale notices that offered the lands competitively. The Bureau adopts this restriction in anticipation that some parcels may pass through the competitive process without a bid but still may be attractive enough to invite several noncompetitive offers. Retaining the parcel configuration, and limiting the offer to a single parcel, will prevent overlapping and partial offers, and allow the Bureau to adjudicate conflicting offers on the same parcel more quickly. Additionally, this requirement will obviate the need to obtain revised stipulations to fit a different lease parcel configuration, thus removing a possible impediment to lease issuance.

One comment on this section of the proposed rulemaking suggested that the final regulation should be flexible enough to allow lease offers on the basis of the parcel number description throughout the two years the lands are available noncompetitively following the competitive offering. The comment recommended that offerors also should be able to rely on the acreage figure associated with the parcel as indicated in the listing. Another comment contended that the parcel number description requirement should be required for the entire 2-year period. A few comments supported limiting the parcel number period to a single day or other extremely brief period. These suggestions are not adopted in the final rulemaking since such a provision would permanently prevent a potential offeror from acquiring only the land configuration he or she might desire in a single lease. Such a requirement could also create confusion in the later stages of the 2-year period of availability of the lands for noncompetitive leasing, since parcel numbers could become numerous following several sale processes. After the required period, the lands in the offer shall be properly described; use of the parcel number by itself will result in rejection of the offer.

Section 3110.8–3 of the proposed rulemaking, redesignated in the final rulemaking as § 3110.5–3, received several comments suggesting deletion of paragraph (e) allowing the authorized officer to waive the land description requirements, stating that it duplicates paragraph (d). Another comment opposed the provision allowing an acquisition tract number in lieu of a legal description because it would complicate the Bureau's automated lands and minerals record system. This provision of the proposed rulemaking was designed to allow the offeror the greatest possible flexibility in clearly and accurately describing lands covered by an offer without loss of priority. The final rulemaking removes paragraph (e) of the proposed rulemaking and redesignates paragraph (f) of the proposed rulemaking as paragraph (e). Redesignated § 3110.5–3(d) is amended to state clearly that the authorized officer may allow the description by acquisition or tract number without any other legal land description required by this section.

Section 3110.6 Withdrawal of offer.

Section 3110.4 of the proposed rulemaking, redesignated as § 3110.6 in the final rulemaking, received several comments that opposed the prohibition of withdrawal of a noncompetitive lease offer earlier than 60 days following its filing. On balance, the reasons for imposing the limitations on withdrawal of an offer filed on lands available after the competitive process outweigh the disadvantages of such a limitation. Experience has shown that offers are treated by some as an "option" on a lease during which time efforts are made to sell it to a third party. When such

efforts fail, the offer is then withdrawn. This practice, although not widespread in the industry, has the effect of encouraging offers filed in less than good faith, and keeps legitimate developers from acquiring available lands as prospects. A 60-day prohibition on withdrawal maximizes the lands available, facilitates orderly issuance of leases, and ensures that the public's resources are spent in furtherance of leasing rather than in aiding lease speculation.

Some comments suggested that allowing withdrawals of offers would speed refunds when a lease is issued to the senior offeror. Junior offers are rejected by the Bureau at the time the senior offeror is issued the lease, and rental refunds are authorized as soon as a lease issues. Allowing such withdrawals would not speed this process but would merely add an unnecessary paperwork burden. When unexpected delays, such as litigation, prevent timely lease issuance, the offer could be withdrawn after the 60 days. The final rulemaking retains the 60-day limitation on withdrawal of offers made in accordance with § 3110.1(b) of the final rulemaking on those lands available during the 2-year period following the end of the competitive offering. In such an offer is withdrawn, the lands would continue to be available for noncompetitive leasing for the remainder of the 2-year period under § 3110.1(b).

A few comments on this section of the proposed rulemaking suggested that the phrase specifying withdrawal "at least 60 days after the date of filing" in this section of the proposed rulemaking was unclear. In response to these comments, the final rulemaking is amended to state that such a withdrawal is allowed only after 60 days from the date of filing of such an offer.

A few comments received on this section of the proposed rulemaking suggested that if noncompetitive offers are allowed to be filed as a means of establishing priority before the competitive offering of the lands, that the offeror should be allowed to withdraw the offer prior to the competitive offering if the stipulations are found to be unacceptable to the offeror. The comment further contended that such offerors should be notified of the stipulations prior to inclusion of the lands in the Notice of Competitive Lease Sale, and that if the stipulations are unacceptable, the lands should not be placed on the sale list or notice. Notification of any stipulations for the lands in such an offer filed prior to the competitive offering is inappropriate and unnecessary. Since the Reform Act places greater emphasis on the competitive offering of lease parcels, all members of the public should be advised of the terms and conditions through the normal competitive procedures for conducting competitive sales. However, this section and § 3101.1–3 have been amended in the final rulemaking to allow for the withdrawal of an offer filed prior to the competitive process, if at any time prior to lease issuance, the offeror finds that the stipulations would be unacceptable. Unlike offers filed under § 3110.1(b), those offers filed prior to the competitive offering would not be affected by the 60-day limitation for withdrawal provided that the withdrawal is made prior to lease issuance.

Section 3110.7 Action on offer.

A number of comments were received on § 3110.5 of the proposed rulemaking, redesignated as § 3110.7 in the final rulemaking. Most comments suggested that paragraph (b), as well as the reference in paragraph (a) to extensions, petitions for reinstatements, and existing or former leases, be removed from this section and placed in Subpart 3120, because it would take at least 90 days for the lands to progress through the competitive process and become available for noncompetitive leasing. The comments contended that such matters as lease reinstatements and extensions should be resolved before offering the lands competitively. It is unlikely that a noncompetitive lease could be issued in such a short time frame, and that reinstatements and extensions should normally be resolved prior to competitive offering of the lands. However, no change is made in these paragraphs in the final rulemaking since the possibility does exist that a recently terminated lease could be offered competitively, receive no bids, and then be available for noncompetitive offer. In view of these comments, § 3120.5–3 of the final rulemaking also has been amended to include this same provision.

Another comment on this section suggested that paragraph (a) be clarified to specify that if a lease is issued for lands included in a terminated lease before a petition for reinstatement is filed, the subsequent lease shall not be canceled. This suggestion is not adopted in the final rulemaking because the regulations provide for cancellation of a lease that should not have been issued. The last sentence of paragraph (a) sufficiently states that the subsequent lease will be canceled if the petitioner is entitled to reinstatement. If the petition is filed after a lease is issued, reinstatement of the prior lease cannot be made.

Several comments on this section suggested that the word "erroneously" be inserted in paragraph (a) to make it clear that leases will not be indiscriminately issued before the necessary paperwork is completed. The comments contended that unless an error is made, a lease should not be issued until final action is taken on all previous offers or leases. The final rulemaking does not adopt this suggestion because it is unnecessary to specify the reason the lease was issued. The intent of this provision is to require cancellation if the lease should not have been issued.

Section 3110.9 Future interest offers.

One comment received on §§ 3110.9–1 and 3120.7 of the proposed rulemaking suggested that the question of competitive and noncompetitive leasing of future interests be addressed by further specific legislation. This comment is beyond the scope of this rulemaking since these final regulations must implement the statute now in effect. Another comment on § 3110.9 of the proposed rulemaking questioned whether a future interest could be leased noncompetitively without first going through the competitive process, and requested clarification of the meaning of the phrase "substantially all of the present operating rights in the lands," suggesting "substantially all" means 50 percent or more and that "lands" could mean future interest lands or all lands in a communitized area.

Under the Reform Act, future interest lands may be leased both competitively and noncompetitively. Since no lease may be issued under the Reform Act without first being subjected to the competitive process, the present interest holder may gain the sole right to a lease with a successful competitive bid over any noncompetitive applicant whose offer is nullified by the competitive bid. Accordingly, the provision limiting leasing noncompetitively only to one who owns "all or substantially all" is removed in §§ 3110.9–1 and 3110.9–2 of the final rulemaking.

A few comments questioned the meaning of the phrase, "the same type and proportion," in § 3110.9–4(a) of the proposed rulemaking. The language is sufficiently clear in the proposed rulemaking that a transfer of a present interest, either record title or operating rights, generates a concurrent transfer of the future interest. No change is made in the final rulemaking.

Part 3120—Competitive Leases

Section 3120.1–1 Lands available for competitive leasing.

Several comments addressed the term "available" in § 3120.1–1 of the proposed rulemaking. One comment suggested a change to clarify the term, expressing concern that the Bureau would offer all available lands whether or not it would be in the public interest to lease and prior to compliance with National Environmental Policy Act requirements. Another comment questioned whether the Bureau could retain the option to withhold tracts. One comment suggested a provision be included requiring the Bureau to offer *all* available lands for competitive leasing within 18 months from their date of availability. Other comments expressed concern as to how unleased lands (those available over-the-counter prior to enactment of the Reform Act and those newly available due to a change in status or the law) could be cycled through the competitive process.

The term "available" means any lands subject to leasing under the Mineral Leasing Act. As used in the context of this section, all such lands are required to be offered competitively. It is Bureau policy prior to offering the lands to determine whether leasing will be in the public interest and to identify stipulation requirements, obtain surface management agency leasing recommendations and consent where applicable and required by law. Since these requirements are required to be met and an identification and copy of the stipulations applicable to each parcel is to be included in the Notice of Competitive Lease Sale, it would be virtually impossible to offer *all* available lands within 18 months. Also, far more lands are and always have been available than have been leased. Moreover, many if not most lands will not be "offered" by the Bureau but are nonetheless available for filing or expressions of interest. Offering unleased lands for cycling through the competitive process is discussed under Subpart 3110 regarding opening orders in special situations for newly available lands. The final rulemaking expands the categories of available lands in this section to include lands for which an offer or expression of interest has been received by the proper BLM office, and lands included by Bureau motion.

A few comments on § 3120.1–1(c) of the proposed rulemaking suggested that when an undivided interest in a lease is canceled, the regulations should include a provision requiring the Bureau to offer to the other holders of interest in that lease a right of first refusal to purchase that interest in an amount equal to the highest bid received at the oral auction or the opportunity to exceed such highest acceptable bid. Offering the right of first refusal is contrary to the competitive intent of the law. Other interest holders would have the opportunity at the sale to exceed the highest bid. The suggestions is not adopted in the final rulemaking.

One comment alleged that § 3120.1–1(d) of the proposed rulemaking allowed leasing within units of the National Park System without consent. This is not the case since this paragraph states only that lands subject to drainage are available for competitive leasing.

Another comment concerning § 3120.1–1(d) suggested that a definition of "protective leasing" be included in this subpart. The suggestion is not adopted as this subject is properly addressed in § 3100.2.

Section 3120.1–2 Requirements.

Several comments on this section of the proposed rulemaking expressed concern about the scheduling of the sale dates, suggesting that the dates not overlap among the Bureau State Offices. It is Bureau policy to plan sale dates on a non-conflicting basis. Sale notices will give those parties wishing to participate an ample amount of time to make plans to attend the oral auctions. Depending on the availability of lands and individual State Office workloads, the sales normally will be scheduled bi-monthly by some State Offices and at least quarterly by other State offices. Where a State Office has few lands available, rather than delaying offering them, it may include these parcels in nearby State Office sales.

Several comments on this section questioned whether oral auctions are required to be held in the States where the available lands are located. The Reform Act allows the Bureau to hold sales in any State where the office has jurisdiction over the lands. The final rulemaking amends this section to make this clear.

A number of comments on § 3120.1–2(c) of the proposed rulemaking recommended that the national minimum acceptable bid be prorated on a net-acre basis rather than on a gross-acre basis. The Bureau has no evidence of Congressional intent to permit proration of bonus bids. Bidders will be made aware of the percentage of Federal mineral interest held in the lands in order to adjust their bids accordingly. Administratively, proration is cumbersome. The recommendation has not been adopted in the final rulemaking.

Section 3120.1–3 Protests and appeals.

One comment of this section of the proposed rulemaking requested that the final rulemaking clarify the provisions for suspension of a lease sale when a protest or appeal is received. The final rulemaking amends this section to specify that only the Assistant Secretary for Land and Minerals Management may suspend a sale for good and just cause after reviewing the reason(s) for such action.

Other comments on this section recommended that, in order to preclude indefinite suspension, specific limitation (e.g., 30 days) should be imposed on the length of time that a parcel can be suspended from competitive sale. Such a time frame is not feasible because the Department cannot determine in advance when the grounds for suspension of any parcel would be resolved.

Section 3120.2–1 Duration of leases.

Several comments addressed the primary term of competitive and noncompetitive leases and requested varying changes in this section of the final rulemaking. Since the Reform Act did not change this provision of the Mineral Leasing Act, there is no need to amend this section.

Section 3120.2–3 Lease size.

Varying comments were received on this section of the proposed rulemaking concerning lease size. A few of the comments requested that the lease size continue to be no larger than 640 acres. After consideration of these comments, it has been determined that the final rulemaking should allow discretion to decide how much acreage should be included in each lease parcel, up to the maximum 2,560 acres specified in the Reform Act. Expressions of interest from industry, the extent of lands available within a particular area, and the goal of parcels having compact form, will be considered by the Bureau in configuring parcels. The final rulemaking adopts the language of the proposed rulemaking without change.

Section 3120.3 Nomination process.

Section 3120.3–1 General.

A large number of comments was received on the type of sale method to be used by the Bureau: The nomination method or the direct sale method. The comments were essentially evenly divided between both methods. The majority of the comments did recommend that the Bureau choose a consistent method nationwide to lessen confusion and assist industry planning.

Several comments questioned the legality of the formal nomination process and expressed the view that this method does not comply with the Reform Act. The Department has considered all the views presented and remains convinced that the nomination process is legally consistent with the Reform Act. Considering the Bureau's experience with the test sales, the variations apparent in the oil and gas leasing activities nationwide, and the many comments received, it is appropriate that Subpart 3120 of the final rulemaking should allow regulatory flexibility to permit the use of either sale method should conditions warrant in the future. The final rulemaking, under § 3120.3, vests in the Director of the Bureau of Land Management and authority to implement the formal nomination process or permit expressions of interest following a public comment period of at least 30 days. This final rulemaking completes the 30-day comment period, and based on the many comments received with regard to expressions of interest (informal nominations) as well as formal nominations, effective with the publication of this final rulemaking, the Director elects to permit informal expressions of interest to be submitted to the proper BLM office, but declines at this time to employ formal nominations under § 3120.3.

All Bureau of Land Management State Offices, at this time, will use the direct sale method. The public hereby is invited to submit informal expressions of interest for available lands by land description to the proper BLM office for processing by Bureau personnel for inclusion in future oral auctions. The identity of filers of expressions of interest will be kept confidential. No specific form or format is required to submit an informal expression of interest.

Several comments suggested inclusion in the final rulemaking of a provision to allow a person who has submitted an informal expression of interest the opportunity to appeal if the Bureau withdraws a parcel from competitive sale. This suggestion to make a Bureau action to withdraw a parcel an appealable decision has not been adopted. In most instances, parcels are withdrawn from sale only for critical reasons, such as lack of surface managing agency consent, title questions, or restrictive stipulations that would cloud title or restrict lease issuance. When a parcel is withdrawn due to errors or factors that are irreconcilable in the requisite time frame, the parcel may be reoffered in a future competitive offering.

In response to several comments pointing out that §§ 3120.3–1 and 3120.3–2(d) of the proposed rulemaking appear to be in conflict, the final rulemaking is amended to clarify that formal nominations require submission of the national minimum acceptable bid.

Section 3120.3–2 Filing of a nomination for competitive leasing.

Numerous comments requested that nominations submitted to the Bureau be kept confidential. If and when this sale method is elected by the Director following a public comment period, confidentiality is anticipated to be provided. The Bureau has determined that confidentiality is both desirable and permissible as part of this sale method.

Section 3120.3–3 Minimum bid and rental remittance.

A few comments requested that a nomination with a deficient payment not result in the elimination of the nominated parcel from the sale. The final rulemaking does not adopt this suggestion due to the confusion that would be caused in ascertaining whether the nomination is valid. The final rulemaking is amended in this section and in § 3120.3–2 to provide for refund of all moneys in instances where nominations are unacceptable.

Section 3120.3–4 Withdrawal of a nomination.

Several comments objected to this section of the proposed rulemaking, which disallowed withdrawal of nominations. Any party submitting the minimum national acceptable bid should be required to accept a lease under the terms specified in the List of Lands Available for Competitive Nominations if that party is the sole nominator and bidder, provided no higher bid is received at the oral auction. High bidders at a sale also are required to accept the lease. Withdrawal of a parcel by the Bureau of Land Management is discussed earlier in this preamble under § 3120.3. If the formal nomination process is implemented in the future, and a parcel is withdrawn by the Bureau, all moneys submitted with the nomination will be refunded. The final rulemaking is amended accordingly.

Section 3120.3–7 Refund.

A number of comments on this section of the proposed rulemaking requested that the Bureau of Land Management be required to refund the amounts tendered by unsuccessful nominators in a timely fashion. Specific time periods suggested by commenters ranged from 30 to 60 days following the oral auction. Some of the comments suggested payment of interest to nominators for the time that the funds are held by the Bureau. The Bureau is without authority to pay interest on such funds. It is Bureau policy to refund unearned funds as promptly as possible consistent with limitations imposed by the U.S. Department of the Treasury. Currently, refunds may not be authorized until 30 days following the receipt of a remittance to prevent dispersal of funds when a remittance subsequently may be dishonored. The Bureau will continue its policy of issuing such refunds as promptly as possible, but such a provision is not necessary in the final rulemaking.

Section 3120.4 Notice of competitive lease sale.

Section 3120.4–1 General.

Several comments expressed the view that this section of the proposed rulemaking was inadequate since it failed to require inclusion in a Notice of Competitive Lease Sale of such items as bidding and payment requirements, lease terms and stipulations, surface managing agency information, and other helpful details. The comments have been considered and certain amendments are incorporated in the final rulemaking to require that the sale notice contain the identification and language of the applicable stipulation(s) for each parcel. As a matter of policy and internal Bureau procedure, the notice generally will contain bidding and payment requirements. However, it is unnecessary to include a high level of detail in this section of the final rulemaking.

Section 3120.4–2 Posting of notice.

A few comments on this section of the proposed rulemaking requested that the Bureau of Land Management prepare an affidavit, setting forth the date of posting of the Notice of Competitive Lease Sale in the proper BLM office, and the date the sale notice is made available to the surface managing agency. Such a process is unnecessary. Affidavits, statements, etc., prepared by the authorized officer swearing that the Bureau has complied with the law would be of no value to a lessee should questions on this procedure ever be raised. The final rulemaking does not adopt these comments.

Another comment on this section of the proposed rulemaking questioned the posting of maps in the surface managing agency's office. The Reform Act requires a map or a narrative description of the affected lands to be posted in the

appropriate office of the leasing and land management agencies. Since all Bureau offices use a narrative description, at a minimum, in sale notices and also have tract books or land plats available that depict leased and unleased lands, there is no need for additional language to be added to this section of the final rulemaking. The comment has not been adopted in the final rulemaking.

Section 3120.5 Competitive sale.

Section 3120.5–1 Oral auction.

One general comment on this section of the proposed rulemaking suggested slower-paced sales to accommodate all bidders, and requested Bureau reconsideration of the use of "rapid fire" auctioneers. The Bureau of Land Management will not regulate the process, allowing Bureau State Offices to use familiar local practice to facilitate the oral auction.

Another comment on this section suggested that the final rulemaking allow mail-in bids prior to the oral auction to accommodate those people not able to be present at the oral auction. This suggestion is not adopted, since the Reform Act does not allow consideration of sealed bids.

Some comments on this section suggested that all bidders should be registered. Another comment recommended that confidential bidding numbers be assigned. Based on the test sales, it has been determined that this practice need not be regulated. The proposed rule language is adopted without change in the final rulemaking.

Many of the comments on paragraph (a) of this section of the proposed rulemaking favored bidding on a per-acre basis rather than on a per-parcel basis. However, it has been determined that a flexible posture on this issue is appropriate and a specific practice will not be required. This will allow Bureau State Offices to utilize either method, depending on the standard practices normally used within the area of each office's jurisdiction. No change is made in the final rulemaking.

Several comments objected to the announcement at the oral auction of nominations accompanied by the national minimum acceptable bid. The concern raised by the comments was that announcement of the names of nominators at the oral auction could influence bidding or nonbidding by other parties. The final rulemaking is amended to provide that only the existence of a nomination will be announced at the oral auction in order to establish the base bidding level for a parcel above which oral bidding must commence. The name of the nominator would not be revealed as no purpose would be served by doing so.

Several comments suggested that § 3120.5–1(c) of the proposed rulemaking was confusing as to the treatment of parcels receiving 2 or more bids with one comment expressing the view that a parcel should be offered at the next competitive sale and that any noncompetitive offer previously filed should retain its priority through the next sale. The final rulemaking has been amended to clarify that this section applies only when multiple nominations result in tie bids for a parcel under the formal nomination process. Such bids will be returned (not rejected) with all moneys refunded to the nominators. Any parcel receiving such multiple nominations when no higher bid is made at the oral auction will be reoffered in a future competitive sale. Additionally, a pending noncompetitive offer filed under § 3110.1(a) for the same parcel in this situation would retain priority if no bids are received for the parcel in a subsequent auction.

Section 3120.5–2 Payments required.

Several comments suggested that the phrase "close of official business hours" in § 3120.5–2(b) of the proposed rulemaking be more specifically defined. This provision in the rule is intended to require that all specified payments for each parcel be made on the same day the parcel is sold. The final rulemaking is amended to allow administrative flexibility to accept payment after official business hours on the same day the parcel is sold in the event that the oral auction extends late, after the normal business time has passed.

Numerous comments expressed dissatisfaction with § 3120.5–2(b)(1) of the proposed rulemaking concerning the payment requirement of 20 percent of the bonus bid on the day of the sale. The comments stated that the $2 national minimum acceptable bid based on acreage is a known amount prior to the sale, allowing checks to be prepared prior to the sale, but that the 20 percent figure, same as the total bonus bid amount, is an unknown. One comment suggested no payment be required on the day of the sale. A few comments recommended requiring payment of the full bonus bid on the day of the sale. In response to these comments, consideration was given to the merits of requiring either the full bonus bid amount or the $2 minimum bonus bid on the day of the sale. It has been decided to require only the $2 minimum bonus bid per acre or fraction thereof at the oral auction. The final rulemaking has been amended accordingly. If experience at future oral auctions finds that payment of the balance of the bonus bid fails to be remitted in a timely manner within 10 working days following the last day of the auction, a future rulemaking will be considered to require 100 percent of bonus payments at the oral auction, similar to requirements now made by some State governments.

Some comments addressed the requirement in § 3120.5–2(b)(3) of the proposed rulemaking regarding fees covering administrative costs, arguing that Congress did not intend that a filing fee be charged in a competitive sale process. The Reform Act does not support this contention. The administrative fee is charged to help defray the costs of the sale and replaces the charge for the proportionate share of the publication costs previously required in the existing regulations. The final rulemaking adopts the proposed rulemaking without change.

A few comments were directed to § 3120.5–2(c) of the proposed rulemaking. Some commenters suggested that the time allowed to submit the balance of the bonus bid after the sale should be extended to 15 days instead of 10 days. The Departmental decision to require only the $2 national minimum acceptable bonus bid on the day of the sale rather than the total bonus was partially based on the understanding that the balance of the bonus bid must be received within 10 working days. This shorter time frame will allow interest revenues to accrue to the U.S. Treasury more rapidly, in conformance with a General Accounting Office (GAO) 1985 study concerning loss of such revenues. The GAO study recommended that the Bureau of Land Management reduce the time frame in which bonus bid balance moneys are required to be remitted. No change is made in the final rulemaking. Other comments on this section of the proposed rulemaking suggested that a new paragraph be added either in this section or in § 3120.5–3(a) to avoid forcing a potential lessee to take a parcel if the stipulations or terms were modified after posting of the parcel on a list or notice. Such a lease parcel modification would require the Bureau to reoffer the parcel due to the Reform Act's notice requirement for modifications of lease terms, so that the suggested change is unnecessary.

Section 3120.5–3 Award of lease.

Some comments suggested revising the phrase "high bidder" to "lessee" in the second sentence of § 3120.5–3(a), because it is the lessee who is

responsible for certifying compliance. For purposes of awarding the lease, the terms high bidder and lessee are considered synonymous. The proposed rulemaking is adopted without change.

A few comments suggested that a bid should be binding and supported a penalty for failure to honor a bid. Another comment, however, questioned the right of the Government to retain the first year's rental when a lease never issues and, further, whether a bidder could be deemed liable as well, under any circumstances, for the balance of the bonus bid. A bid is binding and does commit the bidder to payment of the full bonus amount. This provision as well as retention of the minimum bonus bid, the first year's rental and the administrative fee should deter irresponsible bidders.

Several comments on § 3120.5–3(b) of the proposed rulemaking pointed out that the Reform Act requires that competitive leases be issued within 60 days from the date of the sale. The comments requested that this requirement be specified in the final rulemaking. The recommendation is not adopted. The Bureau is committed to adhere to the time frame required by the Reform Act, and no purpose is served by repeating the requirement in the final rulemaking.

A few comments requested that the final rulemaking clarify whether lands will be reoffered competitively if a bid is rejected, and further questioned whether, in such circumstances, a noncompetitive offer filed prior to the competitive process would retain its priority. The final rulemaking adopts the comments and also provides that such a noncompetitive offer will retain priority, provided no bid is received in a subsequent oral auction that would nullify the offer.

Section 3120.6 Parcels not bid on at auction.

A technical amendment is made in the title of this section in the final rulemaking more properly to describe the procedures that are addressed in this section.

Numerous comments were received on this section of the proposed rulemaking. Several comments favored a uniform policy for the period commencing the availability of lands for filing of noncompetitive offers. Other comments requested that lands not receiving bids be made available on the next business day after the competitive sale. A few comments recommended a cooling off period of varying duration prior to noncompetitive opening of the lands in order to allow review of the available lands before the appointed time for filing of lease offers. The final rulemaking has amended this section to make it consistent with Subpart 3110 regarding availability of those lands for noncompetitive leasing when no bids are received on competitive parcels.

Several comments on the proposed rulemaking suggested that a conflict exists between §§ 3120.6 and 3120.5–1(c). No change is made in the final rulemaking, as parcels receiving no bids in the competitive process are required to be offered noncompetitively, whereas parcels with tie bids resulting from multiple nominations are to be reoffered competitively.

One comment suggested that the Bureau of Land Management should recycle parcels into another competitive offering when no bids are received at the competitive oral auction and no offers are filed during the 2-year period. Such lands should not be recycled until the public identifies the lands to be of interest, e.g., through an expression of interest or a noncompetitive offer filed under § 3110.1(a). This suggestion is not adopted in the final rulemaking.

Section 3120.7 Future interest.

Section 3120.7–1 Nomination to make lands available for competitive lease.

Several comments were received on § 3120.7–1(b) of the proposed rulemaking that would have allowed the holder(s) of the present operating rights to exceed the highest bid received at the competitive sale. A few comments argued strenuously that the present interest holder should have no preferential right. One comment indicated that to allow such a preferential right would subvert the competitive process under the Reform Act by allowing the present owner to avoid bidding in the competitive process. Another comment suggested that allowing a party to exceed the highest bid would not comport with any previous policy. Some comments observed that the Bureau apparently would have to undertake the burden of both identifying and ensuring that the present owner of the oil and gas rights was identified and offered the opportunity to bid. A final comment expressed the view that the present interest owner should be required to protect his or her interest by bidding at the competitive sale.

The Reform Act allows no preference to a present interest holder following a competitive offering of such future interest lands. Accordingly, the final rulemaking removes § 3120.7–1(b).

Section 3120.7–2 Future interest terms and conditions.

A few comments contended that compliance with § 3120.7–2(a) of the proposed rulemaking would be impossible should the future interest owner not hold the present operating rights. The suggestion to limit the requirement to those future interest lessees who also hold the present oil and gas interests has been adopted in the final rulemaking.

A few comments suggested that clarification was needed for the phrase "the same type and proportion," as used in this section of the proposed rulemaking with respect to the requirement that any transfer of the present interest lease would require a similar transfer of the future interest lease. This issue has been discussed earlier in this preamble under § 3110.9–3. For the same reasons addressed previously, no change has been made in the final rulemaking.

Section 3162.3–1 Drilling applications and plans.

Numerous comments were received on this section of the proposed rulemaking. One comment suggested that if the authorized officer denied drilling permits on a lease such that a lease could not be developed, that the leaseholder should be refunded all bonus and rental moneys that had been paid. If such denials were to occur, the lessee or operator could resort to the administrative appeals process and then proceed with judicial recourse for the return of any moneys. This issue is beyond the scope of this rulemaking.

A few comments felt that the 30-day Application for Permit to Drill approval process was too short for completion of the environmental review needed for the drilling proposal. However, the time frame stated in the regulation language does not require the approval of an Application for Permit to Drill on the 30th day. As may be necessary, the Bureau may delay approval based on appropriate reasons. The 30-day period, however, is a period of time in which the Bureau can normally process the majority of the applications to drill.

Numerous comments on this section of the proposed rulemaking were received concerning the administrative delay in approval of an application to drill that would result from the 30-day notice requirement. One comment expressed the view that the additional 30 days of public notice is a superfluous requirement. Other comments also expressed concern that if a lease were to expire during this 30-day period,

particularly if a protest is received during this public review period, the primary term of the lease would, in effect, be shortened by one month. Many comments suggested that those filing an Application for Permit to Drill during the final 30 days of the primary term should be awarded an automatic lease suspension or that any delay in approval be compensated by an automatic extension of the lease. This suggestion has not been adopted in the final rulemaking. As stated above, 30 days is a reasonable period in which the review and approval process on an Application for Permit to Drill can be completed. Onshore Oil and Gas Order No. 1 already establishes a 30-day period for processing a Notice of Staking or an Application for Permit to Drill. In Order No. 1, Operators are forewarned that they should not always expect timely approval if they do not submit their applications at least 30 days prior to the day they wish to start operations. Lack of action on the part of an operator to initiate the required permitting process in a timely manner does not generally constitute reason for a suspension of lease terms or extension of a lease. If the Bureau is unable to take action prior to lease expiration, the operator would be advised and reasons would be given for the delay so that the operator can exercise any appeal rights provided by the regulations.

Another comment suggested that in order to be fully effective on National Forest System lands the rulemaking for § 3162.3–1 should be jointly promulgated with the Department of Agriculture. The Forest Service is developing its separate regulations to govern surface activities on National Forest System lands. The Bureau has no control over the content and timing of the regulations developed by another agency. The Bureau has coordinated with the Forest Service and will comment on its rulemaking to assist in the development of a process that is as streamlined and uniform as possible for drilling applications and surface use plans of operations in order to meet the provisions of the Reform Act.

A few comments recommended that, because the general public, i.e., all interested parties, had the opportunity to consider lease development activities prior to lease issuance through the land use planning and environmental analysis processes, potential opposition to drilling proposals should be limited only to those parties that have a direct interest in the lands affected by the Application for Permit to Drill. Other comments expressed the view that consultation with only the necessary Federal and State agencies was appropriate. The Reform Act states that notice of an Application for Permit to Drill shall be posted at least 30 days before approval and does not address any specific element of the public. There are instances when the authorized officer may have knowledge of parties having specific interests, and consultation with such parties may be appropriate. The final rulemaking is amended to indicate that the authorized officer shall consult with Federal surface management agencies and other interested parties as required and appropriate.

Another comment expressed concern that potential administrative delays in processing Applications for Permit to Drill could occur due to agencies not having established procedures in effect. The Bureau of Land Management currently has procedures in place as specified in Onshore Oil and Gas Order No. 1. New authority is given by the Reform Act to the Secretary of Agriculture for approval of surface use plans of operations. The Forest Service is currently promulgating regulations and procedures to address its processing of these surface use plans of operations.

One comment suggested that the final rulemaking needs to provide specific terms and conditions governing reclamation of disturbed lands and expressed concern that the proposed rulemaking provided for reclamation only upon abandonment. Regulations are not the appropriate place for site specific reclamation standards to be addressed. Such site specific standards are more properly contained as a part of each surface use plan of operations, tailored to the location of the proposed activity. Order No. 1 requires that the lessee or operator must reclaim those portions of disturbed lands that are no longer required for operations. The final rulemaking adopts the proposed language without change.

A few comments were received concerning the distinction made in the proposed rulemaking between the surface use plan of operations and the drilling plan. Some comments stated that there is not a distinct division between the two plans and that the Bureau should still retain authority over some of contents of the surface use plan of operations. Some comments suggested that the reference to the surface use plan of operations in § 3162.3–1 (d)(2), (f), and (h)(3) should be amended to define more clearly the purpose for the surface use plan. In response to these comments, the final rulemaking has added a definition in § 3160.0–5 of a surface use plan of operations as a plan for surface use, disturbance, and reclamation for oil and gas drilling operations. The details of the contents of a surface use program are contained in the Onshore Order No. 1. The Bureau will revise Onshore Order No. 1 to distinguish the surface use program as a separate plan that is not a part of the drilling plan, and to clearly show those activities that will require Forest Service approval in accordance with the Reform Act provisions.

A few comments suggested that § 3162.3–1(b) of the proposed rulemaking be revised to require that the surface use plan of operations for National Forest Systems lands shall be approved by the Secretary of Agriculture or his/her representative prior to approval of the drilling plan by the Bureau of Land Management authorized officer. Similar language already exists in § 3162.3–1(h)(3). Also, the revised Interagency Agreement between the Bureau of Land Management and the Forest Service will clearly outline the approval steps for each agency. The final rulemaking makes no change to the proposed language which is adopted without change.

Some comments recommended that § 3162.3–1(c) be revised to require that no drilling operations or surface disturbance preliminary thereto be commenced prior to approval of the drilling plan and the surface use plan of operations. Similar language already exists in this section and since the Bureau of Land Management approves the Application for Permit to Drill (which consists of the drilling plan and surface use plan) no change is made in the language of the final rulemaking. For any Application for Permit to Drill on National Forest System lands, the Bureau would obtain the specific requirements concerning the surface use plan of operations from the Forest Service prior to approval of the drilling plan. Accordingly, the suggestion is not adopted.

Numerous comments were received on § 3162.3–1(d) of the proposed rulemaking. Some of the comments recommended that the Application for Permit to Drill be submitted directly to the appropriate surface managing agency in order to speed up the permit review process, with the appropriate information forwarded to the Bureau of Land Management, since the key posting times are those at the "local offices" of the surface management agency. The Bureau of Land Management has the principal responsibility for approval of the permit to drill, and the surface use plan of operations is a part of the Application for Permit to Drill. As required by Order No. 1, the authorized

officer of the Bureau of Land Management has 7 days to notify the operator whether the application is technically and administratively correct. To delay receipt by the Bureau of an application by having a surface management agency receive it first and then forward the appropriate information to the appropriate Bureau office would not allow the 7-day deadline to be met. Since both the Bureau and the Forest Service have approval authority over parts of the permit to drill, the posting requirements will have to be met in both local offices to meet the provisions of the Reform Act. The recommendation has not been adopted in the final rulemaking.

A comment suggested that an applicant be allowed to send a copy of the Application for Permit to Drill for surface not under Bureau jurisdiction to the appropriate surface management agency at the same time as it is submitted to the Bureau of Land Management to speed up the processing. Onshore Order No. 1 will be revised to encourage, but not require, operators to submit a duplicate copy of the application for lands and surface of which is not under the Bureau's jurisdiction to the other surface managing agency when posting would be required at both locations.

Another comment suggested that § 3162.3–1(d) be clarified by substituting the phrase "commencement of operations is desired" in lieu of the phrase "commencement of operations is anticipated" that was contained in the proposed rulemaking. The comment expressed the view that "anticipated" could be interpreted to mean that approval to commence operations is not needed. This change is adopted in the final rulemaking.

Several comments received on § 3162.3–1(e) of the proposed rulemaking expressed the view that the phrase "expected problems" contained in this section is confusing and unrealistic since companies plan to drill problem-free wells. The comments felt that it was not clear what specific information would be expected to be addressed and submitted in response to this provision. The comments also indicated that the phrase "proposed mitigation" was not clear and suggested that the sentence read "* * * and proposed mitigation measures to address such hazards." These comments have been adopted and the final rulemaking has been amended to remove ambiguity.

Some comments suggested that the word "restoration" in § 3162.3–1(f) of the proposed rulemaking be changed to "reclamation" to be more consistent with the language used in the Reform Act. This recommendation is adopted.

One comment suggested adding language in § 3162.3–1(f) that would identify the information the Secretary of Agriculture would require in the surface use plan of operations for National Forest System lands. This recommendation is not adopted since the Forest Service will address such requirements in its rulemaking.

A few comments suggested that the language contained at the end of § 3162.3–1(e) of the proposed rulemaking also be added in § 3162.3–1(f). This amendment would allow for surface use plans of operations to be submitted for multiple wells. This suggestion would benefit the permitting process and, therefore, it has been adopted in the final rulemaking.

Some comments suggested that the Bureau should specify more clearly in the final rulemaking where the Application for Permit to Drill, including the surface use of plan of operations, is required to be posted. The Bureau agrees that this would add clarity to the regulations and language is added in § 3162.3–1(g) to require that the posting shall be in the office of the authorized officer of the BLM and in the appropriate surface management agency if other than the BLM.

Numerous comments were received on § 3162.3–1(g) of the proposed rulemaking questioning what would constitute timely posting of notice for the submittal of the Application for Permit to Drill. A few comments requested that the posting period and review and approval process should run concurrently. The Reform Act requires the posting of the Application for Permit to Drill for at least 30 days prior to approval. The law does not limit posting to only 30 days. The Bureau office where the application will be approved is the office where the application is required to be posted. To allow for concurrent posting in the office of the surface management agency, the Bureau will strive to complete the posting as soon as possible after receipt of the Application for Permit to Drill and/or the Notice of Staking. This suggestion is adopted and appropriate language is added in § 3162.3–1(g) of the final rulemaking. Bureau field offices will be instructed to use all available means to process each Application for Permit to Drill and/or Notice of Staking during the 30-day posting period to minimize the need for additional time beyond this prescribed minimum period.

A few comments questioned the level of detail required in the posting of the notice required in § 3162.3–1(g) of the proposed rulemaking. One of the comments pointed out that the proposed rulemaking required a map *and* a narrative description, but the Reform Act requires maps *or* a narrative description. To be more consistent with the law, the final rulemaking is amended to require maps *or* a narrative description. In addition, this section is revised in the final rulemaking to specify the level of information required when maps are used. The level of detail required should be sufficient to allow a person to determine reasonably the area where an action would occur. The purpose of the posting, however, is not to give a detailed account of the actions proposed which would be included in the surface use plan of operations that is available in the posting office for public review.

Another comment questioned when a new posting would be required if a drill site location was moved subsequent to the start of the 30-day posting period. If the proposed location is moved, the authorized officer would have to determine if the affected areas have changed significantly enough to require a 30-day posting period. This should remain an administrative decision, since each case will have to be judged on its own merits.

A few comments expressed concern that if both an Application for Permit to Drill and a request for modification of lease terms were concurrently applied for that there would be separate 30-day posting periods that would run in tandem. The Reform Act and these regulations do so specify. The practice of the Bureau generally will be that each request would be treated as a separate application and a 30-day posting period would be required for each regardless of their time of submittal. However, in normal circumstances these two review periods could occur at the same time without delay of approval of the proposed action. The final rulemaking does not adopt this suggestion.

A few comments were received on the language concerning appeals to the Forest Service for the surface use plan of operations contained in § 3162.3–1(h)(3) of the proposed rulemaking. The language in this section is sufficiently clear that the Forest Service alone is responsible for reviewing the decisions rendered on National Forest System lands.

One comment felt that the 30-day notice requirement should not apply to those Applications for Permit to Drill on private surface. The Reform Act is silent with respect to any distinction concerning private surface and Federally-administered surface. No

change is adopted in the final rulemaking since the law requires posting of the required notice.

A comment suggested that the language "as soon as practicable but in no event later that 5 working days" be added in § 3162.3–1(h). This change is adopted in the final rulemaking as suggested and will make it clear that the authorized officer is to act within a specific time period.

A final comment on this section of the proposed rulemaking suggested that the use of the word "stipulations" could cause confusion because that term is used only in legal documents that convey rights. The final rulemaking adopts the suggestion and replaces "stipulations" with "conditions".

Section 3162.3–2 Subsequent well operations.

Section 3162.3–2(a) is revised to make a technical change to specify that if additional surface disturbance is involved in a proposed drilling plan for subsequent well operations, the applicant's proposal also is required to contain a surface use plan of operations.

Section 3162.3–3 Other lease operations.

This section of the rulemaking is also amended to provide that any proposal for other lease operations is required to include a surface use plan of operations. These revisions, along with a revision in § 3164.3(b), will clarify the role of the U.S. Forest Service in the permitting process as required by the Reform Act.

Section 3162.3–4 Well abandonment.

Section 3162.3–4 in the final rulemaking is amended in response to comments to change the phrase "rehabilitated or restored" to "reclaimed" to be consistent with the language used in the Reform Act. Section 3162.5–1(b) also is amended to make this change in the final rulemaking.

A few comments requested that specific procedures be established in § 3162.3–4(a) of the final rulemaking or in an Onshore Operating Order to document the reclamation compliance requirements. The comments also requested that the language in this section be revised to require that the lessee or operator shall promptly plug and abandon, in accordance with applicable notices and orders. In response to these comments, the specific procedures for documenting operator compliance with reclamation requirements are already contained in Onshore Order No. 1. The intent of this rulemaking is to ensure that operators follow site-specific requirements for the plugging and abandonment of wells as contained in the surface use plan of operations. Such specific information is not appropriately covered universally in an onshore operating order or notice. Two onshore orders are currently in preparation which will outline the Bureau's general well bore requirements for abandonment.

Section 3164.3 Surface rights

A few comments on § 3164.3(b) recommended that this section be revised to reflect more accurately the responsibilities of the U.S. Forest Service as stated in the Reform Act. These comments are adopted and the final rulemaking is amended to include the addition of a new paragraph (c) to specify that the Forest Service shall regulate all surface disturbing activities in accordance with its regulations, and provide the Bureau's authorized officer the notification of appropriate approvals for such activities on National Forest System lands. The provisions of this regulation and approval by the Forest Service are required to be consistent with the terms and conditions of the specific oil and gas lease contract. The Forest Service has no more authority to disapprove activities authorized by the lease rights granted specifically by the lease contract than does the Bureau of Land Management.

Subpart 3220—Competitive leases; General

A comment recommended that the competitive geothermal resources leasing regulations be brought into conformance with the competitive oil and gas leasing regulations contained in this rulemaking by changing the geothermal competitive bidding system from sealed bids to oral auction. Even though the Geothermal Steam Act of 1970 does not prohibit the Secretary from adopting rule changes allowing for oral sales under the geothermal leasing program, such a change were not included in the proposed rulemaking and cannot be included in this final rulemaking.

A few comments were received which were not directed at specific provisions of the proposed rulemaking but rather questioned why the opportunity had not been taken in this rulemaking to revise the procedures for compliance with the National Environmental Policy Act of 1970. These comments referenced two court decisions as evidence that Bureau procedures were deficient. One is a 5-year old decision, *Sierra Club* v. Peterson, 717 F.2d 1409 (D.C. Cir. 1983), and the other is *Conner* v. *Burford*, 836 F.2d 1521 (9th Cir. 1988), both of which involved a National Environmental Policy Act document prepared by the U.S. Forest Service for leasing within the National Forest System in 1981. The Bureau's National Environmental Policy Act compliance procedures have been evolving and improving in recent years. In particular, revised planning regulations were promulgated effective July 1983. These regulations address the oil and gas leasing program as well as all Bureau programs in a systematic, cohesive manner. Also, in November 1986, supplemental guidance specifically addressing planning and National Environmental Policy Act compliance within the Bureau's oil and gas leasing program was implemented through Bureau Manual 1624.2. Both the rulemaking and the Bureau Manual were developed with full public involvement. The Bureau will continue to review its planning and National Environmental Policy Act compliance procedures for all programs on an ongoing basis. At such time as additional regulatory changes appear necessary, proposed rulemaking will be initiated.

Editorial and technical changes, and grammatical and spelling corrections, have been made as needed.

The principal authors of this final rulemaking are Rob Cervantes, Sie Ling Chiang, Karl Duscher, Lois Mason, Judy Reed, and Jeff Zabler, of the Bureau of Land Management Washington Office assisted by numerous Bureau of Land Management Field Office representatives and the staff of the Division of Legislation and Regulatory Management.

It is hereby determined that this proposed rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and no Regulatory Impact Analysis is required. The Department of the Interior has further determined that this final rulemaking will not have a significant effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

The information collection requirements contained in Parts 3100, 3110, 3120, 3130, 3160, 3180, 3200, and 3280 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance numbers 1004–0034, 1004–0065, 1004–0067, 1004–0074, 1004–0132,

1004–0134, 1004–0135, 1004–0136, 1004–0137, 1004–0138, and 1004–0145.

List of Subjects

43 CFR Part 3000

Public lands—mineral resources.

43 CFR Part 3100

Government contracts, Mineral royalties, Oil and gas exploration, Public lands—mineral resources, Reporting and recordkeeping requirements.

43 CFR Part 3110

Government contracts, Oil and gas exploration, Public lands—mineral resources, Reporting and recordkeeping requirements.

43 CFR Part 3120

Government contracts, Oil and gas exploration, Public lands—mineral resources, Reporting and recordkeeping requirements.

43 CFR Part 3130

Alaska, Government contracts, Mineral royalties, Oil and gas exploration, Oil and gas reserves, Public lands—mineral resources, Reporting and recordkeeping requirements, Surety bonds.

43 CFR Part 3160

Government contracts, Indians—lands, Mineral royalties, Oil and gas exploration, Penalties, Public lands—mineral resources, Reporting and recordkeeping requirements.

43 CFR Part 3180

Government contracts, Oil and gas exploration, Public lands—mineral resources, Surety bonds.

43 CFR Part 3200

Geothermal energy, Government contracts, Mineral royalties, Public lands—mineral resources, Reporting and recordkeeping requirements, Surety bonds.

43 CFR Part 3280

Geothermal energy, Government contracts, Public lands—mineral resources, Reporting and recordkeeping requirements, Surety bonds

Under the authority of the Federal Onshore Oil and Leasing Reform Act of 1987, Pub. L. 100–203, and other authorities cited below, Part 3000, Group 3000, and Parts 3100, 3110, 3120, 3130, 3160, and 3180, Group 3100, and Parts 3200 and 3280, Group 3200, Subchapter C, Chapter II of Title 43 of the Code of Federal Regulations, are amended as set forth below.

June 2, 1988.

J. Steven Griles,

Assistant Secretary of the Interior.

1. The table of contents of Part 3000 is amended by adding the following section:

3000.9 Enforcement.

PART 3000—[AMENDED]

1a. The authority citation for Part 3000 is revised to read:

Authority: Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 *et seq*), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359), the Alaska National Interest Lands Conservation Act, as amended (16 U.S.C. 3101 *et seq*), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq*), the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 *et seq.*), the Act of May 21, 1930 (30 U.S.C. 301–306), the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35), the Independent Offices Appropriations Act of 1952 (31 U.S.C. 483a), the Department of the Interior Appropriations Act, Fiscal Year 1981 (42 U.S.C. 6508), and the Attorney General's Opinion of April 2, 1941 (40 Op.Atty.Gen. 41).

2. Section 2000.0–5 is amended by revising paragraph (f) to read:

§ 3000.0–5 Definitions.

(f) "Proper BLM office" means the Bureau of Land Management office having jurisdiction over the lands subject to the regulations in Groups 3000 and 3100, except that all oil and gas lease offers, and assignments or transfers for lands in Alaska shall be filed in the Alaska State Office, Anchorage, Alaska.

(See § 1821–2–1 of this title for office location and area of jurisdiction of Bureau of Land Management offices).

2a. Section 3000.4 is revised to read as follows:

§ 3000.4 Appeals.

Except as provided in §§ 3101.7–3(b), 3120.1–3, 3165.4, and 3427.2 of this title, any party adversely affected by a decision of the authorized officer made pursuant to the provisions of Group 3000 or Group 3100 of this title shall have a right of appeal pursuant to Part 4 of this title.

3. Section 3000.9 is adopted to read as follows:

§ 3000.9 Enforcement.

Provisions of section 41 of the Act shall be enforced by the United States Department of Justice.

PART 3100–OIL AND GAS LEASING

3a. The table of contents of Subpart 3100 is amended by removing the entries for §§ 3100.3, 3100.3–1, and 3100.3–2, and by redesignating §§ 3100.4, 3100.4–1, 3100.4–2, and 3100.4–3 as §§ 3100.3, 3100.3–1, 3100.3–2, and 3100.3–3, respectively.

3b. The table of contents of Subpart 3101 is amended by revising the title of § 3101.1–1 to read "Lease form."; by revising the title of § 3101.1–2 to read "Surface use rights."; by adding the following entries after § 3101.1–2:

3101.1–3 Stipulations and information notices.

3101.1–4 Modification or waiver of lease terms and stipulations.

by revising the title of § 3101.7–2 to read "Action by the Bureau of Land Management."; by removing §§ 3101.7–3 and 3101.7–4; and by redesignating § 3101.7–5 as § 3101.7–3.

3c. The table of contents of Subpart 3109 is amended by revising the title of § 3109.2 to read "Units of the National Park System."

4. The authority citation for Part 3100 is revised to read:

Authority: Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 *et seq.*), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359), the Alaska National Interest Lands Conservation Act, as amended (16 U.S.C. 3101 *et seq.*), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*), the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 *et seq.*), the Act of May 21, 1930 (30 U.S.C. 301–306), the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35), the National Wildlife Refuge Administration Act of 1966 (16 U.S.C. 668dd–ee), the Independent Offices Appropriations Act of 1952 (31 U.S.C. 483a), and the Attorney General's Opinion of April 2, 1941 (40 Op.Atty.Gen. 41).

Subpart 3100—Oil and Gas Leasing; General

5. Section 3100.0–3 is amended by removing the word "and" at the end of paragraphs (a)(2) (iii) and (v), by adding paragraphs (vii), (viii), (ix), (x), and (xi) to paragraph (a)(2), by removing the word "and" at the end of paragraph (b)92)(vi), and adding paragraphs (viii), (ix), (x), (xi), and (xii) to paragraph (b)(2), by revising the title of paragraph (g)(4), and by removing the word "areas' in the first sentence of paragraph (g)(4) and replacing it with the phrase "units of the National Park System", to read as follows:

§ 3100.0–3 Authority.

(a) * * *

(2) * * *

(vii) Lands recommended for wilderness allocation by the surface managing agency;

(viii) Lands within Bureau of Land Management wilderness study areas;

(ix) Lands designated by Congress as wilderness study areas, except where oil and gas leasing is specifically allowed to continue by the statute designating the study area;

(x) Lands within areas allocated for wilderness or further planning in Exeuctive Communication 1504, Ninety-Sixth Congress (House Document numbered 96–119), unless such lands are allocated to uses other than wilderness by a land and resource management plan or have been released to uses other than wilderness by an Act of Congress; and

(xi) Lands within the National Wilderness Preservation System, subject to valid existing rights under section 4(d)(3) of the Wilderness Act established before midnight, December 31, 1983, unless otherwise provided by law.

(b) * * *

(2) * * *

(viii) Lands recommended for wilderness allocation by the surface managing agency;

(ix) Lands within Bureau of Land Management wilderness study areas;

(x) Lands designated by Congress as wilderness study areas, except where oil and gas leasing is specifically allowed to continue by the statute designating the study area;

(xi) Lands within areas allocated for wilderness or further planning in Executive Communication 1504, Ninety-Sixth Congress (House Document numbered 96–119), unless such lands are allocated to uses other than wilderness by a land and resource management plan or have been released to uses other than wilderness by an Act of Congress; and

(xii) Lands within the National Wilderness Preservation System, subject to valid existing rights under section 4(d)(3) of the Wilderness Act established before midnight, December 31, 1983, unless otherwise provided by law.

* * * * *

(g) * * *

(4) *Units of the National Park System.*

* * * * *

6. Section 3100.0–3(c) is amended by removing the citation "(Pub. L. 96–514)" and replacing it with the citation "(42 U.S.C. 6506)".

7. Section 3100.0–5 is amended by adding paragraph (k) to read:

§ 3100.0–5 Definitions.

* * * * *

(k) "Bid" means an amount of remittance offered as partial compensation for a lease equal to or in excess of the national minimum acceptable bonus bid set by statute or by the Secretary, submitted by a person or entity for a lease parcel in a competitive lease sale.

§§ 3100.3, 3100.3–1, and 3100.3–2 [Removed]

8. Sections 3100.3, 3100.3–1, and 3100.3–2 are removed in their entirely.

§§ 3100.4, 3100.4–1, 3100.4–2, and 3100.4–3 [Redesignated as §§ 3100.3, 3110.3–1, 3100.3–2, and 3100.3–3]

9. Sections 3100.4, 3100.4–1, 3100.4–2, and 3100.4–3 are redesignated as §§ 3100.3, 3100.3–1, 3100.3–2, and 3100.3–3, respectively, and the cross reference to "§ 3100.4–1(b)" in newly redesignated § 3100.3–3 is amended to read "§ 3100.3–1(b)".

Subpart 3101—Issuance of Leases

9a. Section 3101.1–3 is amended by revising the third and fourth sentences to read:

§ 3101.1–3 Stipulations and information notices.

* * * * *

* * * Any party submitting a bid under Subpart 3120 of this title, or an offer under § 3110.1(b) of this title during the period when use of the parcel number is required pursuant to § 3110.5–1 of this title, shall be deemed to have agreed to stipulations applicable to the specific parcel as indicated in the List of Lands Available for Competitive Nominations or the Notice of Competitive Lease Sale available from the proper BLM office. A party filing a noncompetitive offer in accordance with § 3110.1(a) of this title shall be deemed to have agreed to stipulations applicable to the specific parcel as indicated in the List of Lands Available for Competitive Nominations or the Notice of Competitive Lease Sale, unless the offer is withdrawn in accordance with § 3110.6 of this title. * * *

10. A new § 3101.1–4 is added to read:

§ 3101.1–4 Modification or waiver of lease terms and stipulations.

A stipulation included in an oil and gas lease shall be subject to modification or waiver only if the authorized officer determines that the factors leading to its inclusion in the lease have changed sufficiently to make the protection provided by the stipulation no longer justified or if proposed operations would not cause unacceptable impacts. If the authorized officer has determined, prior to lease issuance, that a stipulation involves an issue of major concern to the public, modification or waiver of the stipulation shall be subject to public review for at least a 30-day period. In such cases, the stipulation shall indicate that public review is require before modification or waiver. If subsequent to lease issuance the authorized officer determines that a modification or waiver of a lease term or stipulation is substantial, the modification or waiver shall be subject to public review for a least a 30-day period.

11. Section 3101.7–1 is revised to read:

§ 3101.7–1 General requirements.

(a) Acquired lands shall be leased only with the consent of the surface managing agency, which upon receipt of a description of the lands from the authorized officer, shall report to the authorized officer that it consents to leasing with stipulations, if any, or withholds consent or objects to leasing.

(b) Public domain lands shall be leased only after the Bureau has consulted with the surface managing agency and has provided it with a description of the lands, and the surface managing agency has reported its recommendation to lease with stipulations, if any, or not to lease to the authorized officer. If consent or lack of objection of the surface managing agency is required by statute to lease public domain lands, the procedure in paragraph (a) of this section shall apply.

(c) National Forest System lands whether acquired or reserved from the public domain shall not be leased over the objection of the Forest Service. The provisions of paragraph (a) of this section shall apply to such National Forest System lands.

§§ 3101.7–2 and 3101.7–3 [Removed]

12. Sections 3101.7–2 and 3101.7–3 are removed in their entirety.

§ 3101.7–4 [Redesignated as § 3101.7–2 and Amended]

13. Section 3101.7–4 is redesignated as § 3101.7–2 and paragraph (b) is revised to read:

§ 3101.7–2 Action by the Bureau of Land Management.

* * * * *

(b) The authorized officer shall not issue a lease and shall reject any lease offer on lands to which the surface managing agency objects or withholds consent required by statute. In all other instances, the Secretary has the final authority and discretion to decide to issue a lease.

§ 3101.7-5 [Redesignated as § 3101.7-3 and Revised]

14. Section 3101.7-5 is redesignated as § 3101.7-3 and is revised to read:

§ 3101.7-3 Appeals.

(a) The decision of the authorized officer to reject an offer to lease or to issue a lease with stipulations recommended by the surface managing agency may be appealed to the Interior Board of Land Appeals under Part 4 of this title.

(b) Where, as provided by statute, the surface managing agency has required that certain stipulations be included in a lease or has consented, or objected or refused to consent to leasing, any appeal by an affected lease offeror shall be pursuant to the administrative remedies provided by the particular surface managing agency.

15.-16. Section 3101.8 is amended by revising the first sentence to read:

§ 3101.8 State's or charitable organization's ownership of surface overlying federally-owned minerals.

Where the United States has conveyed title to, or otherwise transferred the control of the surface of lands to any State or political subdivision, agency, or instrumentality thereof, or a college or any other educational corporation or association, or a charitable or religious corporation or association, with reservation of the oil and gas rights to the United States, such party shall be given an opportunity to suggest any lease stipulations deemed necessary for the protection of existing surface improvements or uses, to set forth the facts supporting the necessity of the stipulations and also to file any objections it may have to the issuance of a lease. * * *

Subpart 3102—Qualifications of Lessees

17. Section 3102.5-1 is revised to read:

§ 3102.5-1 Compliance.

In order to actually or potentially own, hold, or control an interest in a lease or prospective lease, all parties, including corporations, and all members of associations, including partnerships of all types, shall, without exception, be qualified and in compliance with the act. Compliance means that the lessee, potential lessee, and all such parties (as defined in § 3000.0-5(k)) are:

(a) Citizens of the United States (see § 3102.1) or alien stockholders in a corporation organized under State or Federal law (see § 3102.2);

(b) In compliance with the Federal acreage limitations (see § 3101.2);

(c) Not minors (see § 3102.3);

(d) Except for an assignment or transfer under Subpart 3106 of this title, in compliance with section 2(a)(2)(A) of the Act, in which case the signature on an offer or lease constitutes evidence of compliance. A lease issued to any entity in violation of this paragraph (d) shall be subject to the cancellation provisions of § 3108.3 of this title. The term "entity" is defined at § 3400.0-5(rr) of this title.

(e) Not in violation of the provisions of section 41 of the Act; and

(f) In compliance with section 17(g) of the Act, in which case the signature on an offer, lease, assignment, transfer, constitutes evidence of compliance that the signatory and any subsidiary, affiliate, or person, association, or corporation controlled by or under common control with the signatory, as defined in §3400.0-5(rr) of this title, has not failed or refused to comply with reclamation requirements with respect to all leases and operations thereon in which such person or entity has an interest. Noncompliance with section 17(g) of the Act begins on the effective date of the imposition of a civil penalty by the authorized officer under § 3163.2 of this title, or when the bond is attached by the authorized officer for reclamation purposes, whichever comes first. A lease issued, or an assignment or transfer approved, to any such person or entity in violation of this paragraph (f) shall be subject to the cancellation provisions of § 3108.3 of this title, notwithstanding any administrative or judicial appeals that may be pending with respect to violations or penalties assessed for failure to comply with the prescribed reclamation standards on any lease holdings. Noncompliance shall end upon a determination by the authorized officer that all required reclamation has been completed and that the United States has been fully reimbursed for any costs incurred due to the required reclamation.

(g) In compliance with § 3106.1(b) of this title and section 30A of the Act. The authorized officer may accept the signature on a request for approval of an assignment of less than 640 acres outside of Alaska (2,560 acres within Alaska) as acceptable certification that the assignment would further the development of oil and gas, or the authorized officer may apply the provisions of § 3102.5-3 of this title.

§ 3102.5-2 [Corrected]

18. Section 3102.5-2 as published in the **Federal Register** on May 16, 1988 (53 FR 17340), is amended by correcting the transposed letters "fo" in the second sentence thereof to read "of".

Subpart 3103—Fees, Rentals, and Royalty

19. Section 3103.1-1 is revised to read:

§ 3103.1-1 Form of remittance.

All remittances shall be by personal check, cashier's check, certified check, or money order, and shall be made payable to the Department of the Interior—Bureau of Land Management or the Department of the Interior—Minerals Management Service, as appropriate. Payments made to the Bureau may be made by other arrangements such as by electronic funds transfer or credit card when specifically authorized by the Bureau. In the case of payments made to the Service, such payments may also be made by electronic funds transfer.

20. Section 3103.2-1 is amended by revising the first sentence of paragraph (a) and all of paragraph (b) to read:

§ 3103.2-1 Rental requirements.

(a) Each competitive bid or competitive nomination submitted in response to a List of Lands Available for Competitive Nominations or Notice of Competitive Lease Sale, and each noncompetitive lease offer shall be accompanied by full payment of the first years rental based on the total acreage, if known, and, if not known, shall be based on 40 acres for each smallest legal subdivision. * * *

(b) If the acreage is incorrectly indicated in a List of Lands Available for Competitive Nominations or a Notice of Competitive Lease Sale, payment of the rental based on the error is curable within 15 calendar days of receipt of notice from the authorized officer of the error.

* * * * *

21. Section 3103.2-2 is amended by correcting the first sentence as published in the **Federal Register** of May 16, 1988 (53 FR 17340), to read, "Rentals shall be paid on or before the lease anniversary date." and by removing paragraphs (a) through (k) and inserting in their place paragraph (a) through (f) to read:

§ 3103.2-2 [Amended]

* * * * *

(a) The annual rental for all leases issued subsequent to December 22, 1987, shall be $1.50 per acre or fraction thereof for the first 5 years of the lease term and $2 per acre or fraction for any subsequent year, except as provided in paragraph (b) of this section;

(b) The annual rental for all leases issued on or before December 22, 1987, or issued pursuant to an application or

offer to lease filed prior to that date shall be as stated in the lease or in regulations in effect on December 22, 1987, except:

(1) Leases issued under former Subpart 3112 of this title on or after February 19, 1982, shall be subject after February 1, 1989, to annual rental in the sixth and subsequent lease years of $2 per acre or fraction thereof;

(2) The rental rate of any lease determined after December 22, 1987, to be in a known geological structure outside of Alaska or in a favorable petroleum geological province within Alaska shall not be increased because of such determination;

(3) Exchange and renewal leases shall be subject to rental of $2 per acre or fraction thereof upon exchange or renewal;

(c) Rental shall not be due on acreage for which royalty or minimum royalty is being paid, except on nonproducing leases when compensatory royalty has been assessed in which case annual rental as established in the lease shall be due in addition to compensatory royalty;

(d) On terminated leases that were originally issued noncompetitively and are reinstated under § 3108.2–3 of this title, and on noncompetitive leases that were originally issued under § 3108.2–4 of this title, the annual rental shall be $5 per acre or fraction thereof beginning with the termination date upon the filing, on or after the effective date of this regulation, of a petition to reinstate a lease or convert an abandoned, unpatented oil placer mining claim;

(e) On terminated leases that were originally issued competitively, the annual rental shall be $10 per acre or fraction thereof beginning with the termination date upon the filing, on or after the effective date of this regulation, of a petition to reinstate a lease under § 3108.2–3 of this title; and

(f) Each succeeding time a specific lease is reinstated under § 3108.2–3 of this title, the annual rental on that lease shall increase by an additional $5 per acre or fraction thereof for leases that were originally issued noncompetitively and by an additional $10 per acre or fraction thereof for leases that were originally issued competitively.

22. Section 3103.3–1 is revised to read:

§ 3103.3–1 Royalty on production.

(a) Royalty on production shall be payable only on the mineral interest owned by the United States. Royalty shall be paid in amount or value of the production removed or sold as follows:

(1) 12½ percent on all leases, including exchange and renewal leases and leases issued in lieu of unpatented oil placer mining claims under § 3108.2–4 of this title, issued after December 22, 1987, except:

(i) Leases issued after December 22, 1987, resulting from offers to lease or bids filed on or before December 22, 1987, which are subject to the rates in effect on December 22, 1987; and

(ii) Leases issued on or before December 22, 1987, which are subject to the rates contained in the lease or in regulations at the time of issuance;

(2) 16⅔ percent on noncompetitive leases reinstated under § 3108.2–3 of this title plus an additional 2 percentage-point increase added for each succeeding reinstatement;

(3) Not less than 4 percentage points above the rate used for royalty determination contained in the lease that is reinstated or in force at the time of issuance of the lease that is reinstated for competitive leases, plus an additional 2 percentage-point increase added for each succeeding reinstatement.

(b) Leases that qualify under specific provisions of the Act of August 8, 1946 (30 U.S.C. 226c) may apply for a limitation of a 12½ percent royalty rate.

(c) The average production per well per day for oil and gas shall be determined pursuant to 43 CFR 3162.7–4.

(d) Payment of a royalty on the helium component of gas shall not convey the right to extract the helium. Applications for the right to extract helium shall be made under Part 16 of this title.

§ 3103.3–2 [Amended]

23. Section 3103.3–2(a) is revised to read:

(a) A minimum royalty shall be payable at the expiration of each lease year beginning on or after a discovery of oil or gas in paying quantities on the lands leased, except that on unitized leases the minimum royalty shall be payable only on the participating acreage, at the following rates:

(1) On leases issued on or after August 8, 1946, and on those issued prior thereto if the lessee files an election under section 15 of the Act of August 8, 1946, a minimum royalty of $1 per acre or fraction thereof in lieu of rental, except as provided in paragraph (a)(2) of this section; and

(2) On leases issued from offers filed after December 22, 1987, and on competitive leases issued from successful bids placed at oral auctions conducted after December 22, 1987, a minimum royalty in lieu of rental of not less than the amount of rental which otherwise would be required for that lease year.

* * * * *

Subpart 3104—Bonds

24. Section 3104.1 is revised to read:

§ 3104.1 Bond obligations.

(a) Prior to the commencement of surface disturbing activities related to drilling operations, the lessee, operating rights owner (sublessee), or operator shall submit a surety or a personal bond, conditioned upon compliance with all of the terms and conditions of the entire leasehold(s) covered by the bond, as described in this subpart. The bond amounts shall be not less than the minimum amounts described in this subpart in order to ensure compliance with the act, including complete and timely plugging of the well(s), reclamation of the lease area(s), and the restoration of any lands or surface waters adversely affected by lease operations after the abandonment or cessation of oil and gas operations on the lease(s) in accordance with, but not limited to, the standards and requirements set forth in §§ 3162.3 and 3162.5 of this title and orders issued by the authorized officer.

(b) Surety bonds shall be issued by qualified surety companies approved by the Department of the Treasury (see Department of the Treasury Circular No. 570).

(c) Personal bonds shall be accompanied by:

(1) Certificate of deposit issued by a financial institution, the deposits of which are Federally insured, explicitly granting the Secretary full authority to demand immediate payment in case of default in the performance of the terms and conditions of the lease. The certificate shall explicitly indicate on its face that Secretarial approval is required prior to redemption of the certificate of deposit by any party;

(2) Cashier's check;

(3) Certified check;

(4) Negotiable Treasury securities of the United States of a value equal to the amount specified in the bond. Negotiable Treasury securities shall be accompanied by a proper conveyance to the Secretary of full authority to sell such securities in case of default in the performance of the terms and conditions of a lease; or

(5) Irrevocable letter of credit issued by a financial institution, the deposits of which are Federally insured, for a specific term, identifying the Secretary as sole payee with full authority to demand immediate payment in the case of default in the performance of the terms and conditions of a lease.

Letters of credit shall be subject to the following conditions:

(i) The letter of credit shall be issued only by a financial institution organized or authorized to do business in the United States;

(ii) The letter of credit shall be irrevocable during its term. A letter of credit used as security for any lease upon which drilling has taken place and final approval of all abandonment has not been given, or as security for a statewide or nationwide lease bond, shall be forfeited and shall be collected by the authorized officer if not replaced by other suitable bond or letter of credit at least 30 days before its expiration date;

(iii) The letter of credit shall be payable to the Bureau of Land Management upon demand, in part or in full, upon receipt from the authorized officer of a notice of attachment stating the basis therefor, e.g., default in compliance with the lease terms and conditions or failure to file a replacement in accordance with paragraph (c)(5)(ii) of this section;

(iv) The initial expiration date of the letter of credit shall be at least 1 year following the date it is filed in the proper BLM office; and

(v) The letter of credit shall contain a provision for automatic renewal for periods of not less than 1 year in the absence of notice to the proper BLM office at least 90 days prior to the originally stated or any extended expiration date.

25. Section 3104.2 is revised to read:

§ 3104.2 Lease bond.

A lease bond may be posted by a lessee, owner of operating rights (sublessee), or operator in an amount of not less than $10,000 for each lease conditioned upon compliance with all of the terms of the lease. Where 2 or more principals have interests in different formations or portions of the lease, separate bonds may be posted. The operator on the ground shall be covered by a bond in his/her own name as principal, or a bond in the name of the lessee or sublessee, provided that a consent of the surety, or the obligor in the case of a personal bond, to include the operator under the coverage of the bond is furnished to the Bureau office maintaining the bond.

26. Section 3104.3 is revised to read:

§3104.3 Statewide and nationwide bonds.

(a) In lieu of lease bonds, lessees owners of operating rights (sublessees), or operators may furnish a bond in an amount of not less than $25,000 convering all leases and operations in any one State.

(b) In lieu of lease bonds or statewide bonds, lessees, owners of operating rights (sublessees), or operators may furnish a bond in an amount of not less than $150,000 covering all leases and operations nationwide.

27. Section 3104.4 is revised to read:

§ 3104.4 Unit operator's bond.

In lieu of individual lease, statewide, or nationwide bonds for operations conducted on leases committed to an approved unit agreement, the unit operator may furnish a unit operator bond in the manner set forth in § 3104.1 of this title. The amount of such a bond shall be determined by the authorized officer. The format for such a surety bond is set forth in § 3186.2 of this title. Where a unit operator is covered by a nationwide or statewide bond, coverage for such a unit may be provided by a rider to such bond specifically covering the unit and increasing the bond in such amount as may be determined appropriate by the authorized officer.

28. Section 3104.5 is revised to read:

§ 3104.5 Increased amount of bonds.

(a) When an operator desiring approval of an Application for Permit to Drill has caused the Bureau to make a demand for payment under a bond or other financial guarantee within the 5-year period prior to submission of the Application for Permit to Drill, due to failure to plug a well or reclaim lands completely in a timely manner, the authorized officer shall require, prior to approval of the Application for Permit to Drill, a bond in an amount equal to the costs as estimated by the authorized officer of plugging the well and reclaiming the disturbed area involved in the proposed operation, or in the minimum amount as prescribed in this subpart, whichever is greater.

(b) The authorized officer may require an increase in the amount of any bond whenever it is determined that the operator poses a risk due to factors, including, but not limited to, a history of previous violations, a notice from the Service that there are uncollected royalties due, or the total cost of plugging existing wells and reclaiming lands exceeds the present bond amount based on the estimates determined by the authorized officer. The increase in bond amount may be to any level specified by the authorized officer, but in no circumstances shall it exceed the total of the estimated costs of plugging and reclamation, the amount of uncollected royaltics due to the Service, plus the amount of monies owed to the lessor due to previous violations remaining outstanding.

Subpart 3106—Transfers by Assignment, Sublease, or Otherwise

29. Section 3106.1 is revised to read as follows:

§ 3106.1 Transfers, general.

(a) Leases may be transferred by assignment or sublease as to all or part of the acreage in the lease or as to either a divided or undivided interest therein. An assignment of a separate zone or deposit, or of part of a legal subdivision, shall be disapproved.

(b) An assignment of less than 640 acres outside Alaska or of less than 2,560 acres within Alaska shall be disapproved unless the assignment constitutes the entire lease or is demonstrated to further the development of oil and gas to the satisfaction of the authorized officer. Execution and submission of a request for approval of such an assignment shall certify that the assignment would further the development of oil and gas, subject to the provisions of § 3102.5–3 of this title. The rights of the transferee to a lease or an interest therein shall not be recognized by the Department until the transfer has been approved by the authorized officer. A transfer may be withdrawn in writing, signed by the transferor and the transferee, if the transfer has not been approved by the authorized officer. A request for approval of a transfer of a lease or interest in a lease shall be filed within 90 days from the date of its execution. The 90-day filing period shall begin on the date the transferor signs and dates the transfer. If the transfer is filed after the 90th day, the authorized officer may require verification that the transfer is still in force and effect. A transfer of production payments or overriding royalty or other similar payments, arrangements, or interests shall be filed in the proper BLM office but shall not require approval.

(c) No transfer of an offer to lease or interest in a lease shall be approved prior to the issuance of the lease.

Subpart 3107—Continuation, Extension of Renewal

§ 3107.1 [Corrected]

29a. Section 3107.1 is amended by correcting the word "lease" in the phrase "penetrate at least 1 formation recognized" in the second sentence thereof as published in the Federal Register of May 16, 1988 (53 FR 17340), to read "least".

30. Section 3107.2–2 is amended by adding at the end thereof a sentence to read:

§ 3107.2–2 Cessation of production.

* * * The 60-day period commences upon receipt of notification from the authorized officer that the lease is not capable of production in paying quantities.

31. Section 3107.2–3 is amended by revising the first sentence to read:

§ 3107.2–3 Leases capable of production.

No lease for lands on which there is a well capable of producing oil or gas in paying quantities shall expire because the lessee fails to produce the same, unless the lessee fails to place the lease in production within a period of not less than 60 days as specified by the authorized officer after receipt of notice by certified mail from the authorized officer to so.* * *

32. Section 3107.7 is amended by revising the last sentence and adding an additional sentence to read:

§ 3107.7 Exchange leases—20-year term.

* * * An application to exchange a lease for a new lease shall be filed, in triplicate, by the lessee at the proper BLM office, shall show full compliance by the applicant with the terms of the lease and applicable regulations, and shall be accompanied by a nonrefundable application fee of $75. Execution of the exchange lease by the applicant is certification of compliance with § 3102.5 of this title.

33. Section 3107.8–1(a) is revised to read:

§ 3107.8–1 Requirements.

(a) Twenty year leases and renewals thereof may be renewed for successive terms of 10 years. Any application for renewal of a lease shall be made by the lessee, and may be joined in or consented to by the operator. The application shall show whether all monies due the United States have been paid and whether operations under the lease have been conducted in compliance with the applicable regulations.

* * * * *

34. Section 3107.8–3(a) is amended by revising the last sentence to read:

§ 3107.8–3 Approval.

(a) * * * Upon receipt of the executed lease forms, which constitutes certification of compliance with § 3102.5 of this title, and any required bond, the authorized officer shall execute the lease and deliver 1 copy to the lessee.

* * * * *

Subpart 3108—Relinquishments, Termination, Cancellation

35. Section 3108.1 is amended by revising the last sentence to read:

§ 3108.1 Relinquishment.

* * * A relinquishment shall take effect on the date it is filed, subject to the continued obligation of the lessee and surety to make payments of all accrued rentals and royalties, to place all wells on the lands to be relinquished in condition for suspension by authorized shut-in or abandonment, and to complete reclamation of the leased lands or surface waters adversely affected by lease operations in a timely manner after abandonment or cessation of oil and gas operations on the lease, in accordance with the regulations and the terms of the lease.

§ 3108.2–4 [Amended]

36. Section 3108.2–4(e)(2) is amended by removing "§ 3102.3–1" and replacing it with "§ 3103.3–1."

37. Section 3108.3 is amended by revising paragraph (a), redesignating paragraph (b) as paragraph (d), and adding new paragraphs (b) and (c), to read as follows:

§ 3108.3 Cancellation.

(a) Whenever the lessee fails to comply with any of the provisions of the law, the regulations issued thereunder, or the lease, the lease may be canceled by the Secretary, if the leasehold does not contain a well capable of production of oil or gas in paying quantities, or if the lease is not committed to an approved cooperative or unit plan or communitization agreement that contains a well capable of production of unitized substances in paying quantities. The lease may be canceled only after notice to the lessee in accordance with section 31(b) of the Act and only if default continues for the period prescribed in that section after service of 30 days notice of failure to comply.

(b) Whenever the lessee fails to comply with any of the provisions of the law, the regulations issued thereunder, or the lease, and if the leasehold contains a well capable of production of oil or gas in paying quantities, or if the lease is committed to an approved cooperative or unit plan or communitization agreement that contains a well capable of production of unitized substances in paying quantities, the lease may be canceled only by judicial proceedings in the manner provided by section 31(a) of the Act.

(c) If any interest in any lease is owned or controlled, directly or indirectly, by means of stock or otherwise, in violation of any of the provisions of the act, the lease may be canceled, or the interest so owned may be forfeited, or the person so owning or controlling the interest may be compelled to dispose of the interest, only by judicial proceedings in the manner provided by section 27(h)(1) of the Act.

37a. The caption of § 3108.5 as published in the **Federal Register** of May 16, 1988 (53 FR 17340), is corrected to read as follows:

§ 3108.5 Waiver or suspension of lease rights.

Subpart 3109—Leasing Under Special Acts

§ 3109.1–2 [Corrected]

37b. Section 3109.1–2 as published in the **Federal Register** of May 16, 1988 (53 FR 17340), is amended by correcting the word "by" the second time it appears in the last sentence thereof to read "but".

§ 3109.2 [Amended]

37c. Section 3109.2 is amended by revising its title to read "Units of the National Park System", by revising the phrase "National Park Service areas" wherever it appears to read "units of the National Park System", and by revising the words "area" and "areas" wherever they appear to read "unit" and "units", respectively.

§ 3109.3 [Removed]

§ 3109.4 [Redesignated as § 3109.3]

38. Section 3109.3 is removed, and § 3109.4 is redesignated as § 3109.3.

39. Part 3110 is revised to read:

PART 3110—NONCOMPETITIVE LEASES

Subpart 3110—Noncompetitive Leases

Sec.

3110.1 Lands available for noncompetitive offer and lease.
3110.2 Priority.
3110.3 Lease terms.
3110.3–1 Duration of lease.
3110.3–2 Dating of leases.
3110.3–3 Lease offer size.
3110.4 Requirements for offer.
3110.5 Description of lands in offer
3110.5–1 Parcel number description.
3110.5–2 Public domain.
3110.5–3 Acquired lands.
3110.5–4 Accreted lands.
3110.5–5 Conflicting descriptions.
3110.6 Withdrawal of offer.
3110.7 Action on offer.
3110.8 Amendment to lease.
3110.9 Future interest offers.
3110.9–1 Availability.
3110.9–2 Form of offer.
3110.9–3 Fractional present and future interest.
3110.9–4 Future interest terms and conditions.

Authority: Mineral Leasing Act of 1920, as amended and supplemental (30 U.S.C. 181 *et seq.*), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–

359), the Alaska National Interest Lands Conservation Act, as amended (16 U.S.C. 3101 *et seq.*), Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*), the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35), and the Independent Offices Appropriations Act of 1952 (31 U.S.C. 483a).

Subpart 3110—Noncompetitive Leases

§ 3110.1 Lands available for noncompetitive offer and lease.

(a) *Offer.* (1) Effective June 12, 1988, through January 2, 1989, noncompetitive lease offers may be filed only for lands available under § 3110.1(b) of this title. Noncompetitive lease offers filed after December 22, 1987, and prior to June 12, 1988, for lands available for filing under § 3110.1(a) of this title shall receive priority. Such offers shall be exposed to competitive bidding under Subpart 3120 of this title and if no bid is received, a noncompetitive lease shall be issued all else being regular. After January 2, 1989, noncompetitive lease offers may be filed on unleased lands, except for:

(i) Those lands which are in the one-year period commencing upon the expiration, termination, relinquishment, or cancellation of the leases containing the lands; and

(ii) Those lands included in a Notice of Competitive Lease Sale or a List of Lands Available for Competitive Nominations. Neither exception is applicable to lands available under § 3110.1(b) of this title.

(2) Noncompetitive lease offers may be made pursuant to an opening order or other notice and shall be subject to all provisions and procedures stated in such order or notice.

(3) No noncompetitive lease may issue for any lands unless and until they have satisfied the requirements of § 3110.1(b) of this title.

(b) *Lease.* Only lands that have been offered competitively under Subpart 3120 of this title, and for which no bid has been received, shall be available for noncompetitive lease. Such lands shall become available for a period of 2 years beginning on the first business day following the last day of the competitive oral auction, or when formal nominations have been requested as specified in § 3120.23–1 of this title, or the first business day following the posting of the Notice of Competitive Lease Sale, and ending on that same day 2 years later. A lease may be issued from an offer properly filed any time within the 2-year noncompetitive leasing period.

§ 3110.2 Priority.

(a) Offers filed for lands available for noncompetitive offer or lease, as specified in §§ 3110.1(a)(1) and 3110.1(b) of this title, shall receive priority as of the date and time of filing as specified in § 1821.2–3(a) of this title, except that all noncompetitive offers shall be considered simultaneously filed if received in the proper BLM office any time during the first business day following the last day of the competitive oral auction, or when formal nominations have been requested as specified in § 3120.3–1 of this title, on the first business day following the posting of the Notice of Competitive Lease Sale. An offer shall not be available for public inspection the day it is filed.

(b) If more than 1 application was filed for the same parcel in accordance with the regulations contained in former Subpart 3112 of this title, and if no lease has been issued by the authorized officer prior to the effective date of these regulations, only a single priority application shall be selected from the filings. If the selected application fails to mature into a lease, the lands shall be available for offer under § 3110.1(a) of this title.

§ 3110.3 Lease terms.

§ 3110.3–1 Duration of lease.

All noncompetitive leases shall be for a primary term of 10 days.

§ 3110.3–2 Dating of leases.

All noncompetitive leases shall be considered issued when signed by the authorized officer. Noncompetitive leases, except future interest leases issued under § 3110.9 of this title, shall be effective as of the first day of the month following the date the leases are issued. A lease may be made effective on the first day of the month within which it is issued if a written request is made prior to the date of signature of the authorized officer. Future interest leases issued under § 3110.9 of this title shall be effective as of the date the mineral interests vest in the United States.

§ 3110.3–3 Lease offer size.

(a) Lease offers for public domain minerals shall not be made for less than 640 acres or 1 full section, whichever is larger, where the lands have been surveyed under the rectangular survey system or are within an approved protracted survey, except where the offer includes all available lands within a section and there are no contiguous lands available for lease. Such public domain lease offers in Alaska shall not be made for less than 2,560 acres or 4 full contiguous sections, whichever is larger, where the lands have been surveyed under the rectangular survey system or are within an approved protracted survey, except where the offer includes all available lands within the subject section and there are no contiguous lands available for lease. Where an offer exceeds the minimum 640-acre provision of this paragraph, the offer may include less than all available lands in any given section. Cornering lands are not considered contiguous lands. This paragraph shall not apply to offers made under § 3108.2–4 of this title or where the offer is filed on an entire parcel as it was offered by the Bureau in a competitive sale during that period specified under § 3110.5–1 of this title.

(b) An offer to lease public domain or acquired lands may not include more than 10,240 acres. The lands in an offer shall be entirely within an area of 6 miles square or within an area not exceeding 6 surveyed sections in length or width measured in cardinal directions. An offer to lease acquired lands may exceed the 6 mile square limit if:

(1) The lands are not surveyed under the rectangular survey system of public land surveys and are not within the area of the public land surveys; and

(2) The tract desired is described by the acquisition or tract number assigned by the acquiring agency and less than 50 percent of the tract lies outside the 6 mile square area, and such acquisition or tract number is provided in accordance with § 3110.5–2(d) of this title in lieu of any other description.

(c) If an offer exceeds the 10,240 acre maximum by not more than 160 acres, the offeror shall be granted 30 days from notice of the excess to withdraw the excess acreage from the offer, failing which the offer shall be rejected and priority lost.

§ 3110.4 Requirements for offer.

(a) An offer to lease shall be made on a current form approved by the Director, or on unofficial copies of that form in current use. For noncompetitive leases processed under § 3108.2–4 of this title, the current lease form shall be used. Copies shall be exact reproductions on 1 page of both sides of the official approved form, without additions, omissions, or other changes, or advertising. The original copy of each offer shall be typewritten or printed plainly in ink, signed in ink and dated by the offeror or the offeror's duly authorized agent, and shall be accompanied by the first year's rental and a nonrefundable filing fee of $75. The original and 2 copies of each offer to lease, with each copy showing that the original has been signed, shall be filed in the proper BLM office. A

noncompetitive offer to lease a future interest applied for under § 3109.9 of this title shall be accompanied by a nonrefundable filing fee of $75. Where remittance for offers are returned for insufficient funds, the offer shall obtain priority of filing until the date the remittance is properly made.

(b) Where a correction to an offer is made, whether at the option of the offeror or at the request of the authorized officer, it shall gain priority as of the date the filing is correct and complete. The priority that existed before the date the corrected offer is filed, may be defeated by an intervening offer to the extent of any conflict in such offers, except as provided under §§ 3103.2–1(a) and 3110.3–3(c) of this title.

(c) An offer shall be limited to either public domain minerals or acquired lands minerals, subject to the provisions for corrections under paragraph (b) of this section.

(d) Compliance with Subpart 3102 shall be required.

(e) All offers for leases should name the United States agency from which consent to the issuance of a lease shall be obtained, or the agency that may have title records covering the ownership for the mineral interest involved, and identify the project, if any, of which the lands covered by the offer are a part.

§ 3110.5 Description of lands in offer.

§ 3110.5–1 Parcel number description.

From the first day following the end of a competitive process until the end of that same month, the only acceptable description for a noncompetitive lease offer for the lands covered by that competitive process shall be the parcel number on the List of Lands Available for Competitive Nominations or the Notice of Competitive Lease Sale, whichever is appropriate. Each such offer shall contain only a single parcel. Thereafter, the description of the lands shall be made in accordance with the remainder of this section.

§ 3110.5–2 Public domain.

(a) If the lands have been surveyed under the public land rectangular survey system, each offer shall describe the lands by legal subdivision, section, township, range, and, if needed, meridian.

(b) If the lands have not been surveyed under the public land rectangular system, each offer shall describe the lands by metes and bounds, giving courses and distances between the successive angle points on the boundary of the tract, and connected by courses and distances to an official corner of the public land surveys.

(c) When protracted surveys have been approved and the effective date thereof published in the **Federal Register**, all offers to lease lands shown on such protracted surveys, filed on or after such effective date, shall describe the lands in the same manner as provided in paragraph (a) of this section for officially surveyed lands.

(d)(1) Where offers are pending for unsurveyed lands that are subsequently surveyed or protracted before the lease issuance, the description in the lease shall be conformed to the subdivisions of the approved protracted survey or the public land survey, whichever is appropriate.

(2) The description of lands in an existing lease shall be conformed to a subsequent resurvey or amended protraction survey, whichever is appropriate.

(e) The requirements of this section shall apply to applications for conversion of abandoned unpatented oil placer mining claims made under § 3108.2–4 of this title, except that deficiencies shall be curable.

§ 3110.5–3 Acquired lands.

(a) If the lands applied for lie within and conform to the rectangular system of public land surveys and constitute either all or a portion of the tract acquired by the United States, such lands shall be described by legal subdivision, section, township, range, and, if needed, meridian.

(b) If the lands applied for do not conform to the rectangular system of public land surveys, but lie within an area of the public land surveys and constitute the entire tract acquired by the United States, such lands shall be described by metes and bounds, giving courses and distances between the successive angle points with appropriate ties to the nearest official survey corner, or a copy of the deed or other conveyance document by which the United States acquired title to the lands may be attached to the offer and referred to therein in lieu of redescribing the lands on the offer form. If the desired lands constitute less than the entire tract acquired by the United States, such lands shall be described by metes and bounds, giving courses and distances between the successive angle points with appropriate ties to the nearest official survey corner. If a portion of the boundary of the desired lands coincides with the boundary in the deed or other conveyance document, that boundary need not be redescribed on the offer form, provided that a copy of the deed or other conveyance document upon which the coinciding description is clearly identified is attached to the offer. That portion of the description not coinciding shall be tied by description on the offer by courses and distances between successive angle points into the description in the deed or other conveyance document.

(c) If the lands applied for lie outside an area of the public land surveys and constitute the entire tract acquired by the United States, such lands shall be described as in the deed or other conveyance document by which the United States acquired title to the lands, or a copy of that document may be attached to the offer and referred to therein in lieu of redescribing the lands on the offer form. If the desired lands constitute less than the entire tract acquired by the United States, such lands shall be described by courses and distances between successive angle points tying by courses and distances into the description in the deed or other conveyance document. If a portion of the boundary of the desired lands coincides with the boundary in the deed or other conveyance document, that boundary need not be redescribed on the offer form, provided that a copy of the deed or other conveyance document upon which the coinciding description is clearly identified is attached to the offer. That portion of the description not coinciding shall be tied by description in the offer by courses and distances between successive angle points into the description in the deed or other conveyance document.

(d) Where the acquiring agency has assigned an acquisition or tract number covering the lands applied for, without loss of priority to the offeror, the authorized officer may require that number in addition to any description otherwise required by this section. If the authorized officer determines that the acquisition or tract number, together with identification of the State and county, constitutes an adequate description, the authorized officer may allow the description in this manner in lieu of other descriptions required by this section.

(e) Where the lands applied for do not conform to the rectangular system of public land surveys, without loss of priority to the offeror, the authorized officer may require 3 copies of a map upon which the location of the desired lands are clearly marked with respect to the administrative unit or project of which they are a part.

§ 3110.5–4 Accreted lands.

Where an offer includes any accreted lands, the accreted lands shall be

described by metes and bounds, giving courses and distances between the successive angle points on the boundary of the tract, and connected by courses and distances to an angle point on the perimeter of the tract to which the accretions appertain.

§ 3110.5–5 Conflicting descriptions.

If there is any variations in the land description among the required copies of the official forms, the copy showing the date and time of receipt in the proper BLM office shall control.

§ 3110.6 Withdrawal of offer.

An offer for noncompetitive lease under this subpart may be withdrawn in whole or in part by the offeror. However, a withdrawal of an offer made in accordance with § 3110.1(b) of this title may be made only if the withdrawal is received by the proper BLM office after 60 days from the date of filing of such offer. No withdrawal may be made once the lease, an amendment of the lease, or a separate lease, whichever covers the lands so described in the withdrawal, has been signed on behalf of the United States. If a public domain offer is partially withdrawn, the lands retained in the offer shall comply with § 3110.3–3(a) of this title.

§ 3110.7 Action on offer.

(a) No lease shall be issued before final action has been taken on any prior offer to lease the lands or any extension of, or petition for reinstatement of, an existing or former lease on the lands. If a lease is issued before final action, it shall be canceled, if the prior offeror is qualified to receive a lease or the petitioner is entitled to reinstatement of a former lease.

(b) The authorized officer shall not issue a lease for lands covered by a lease which terminated automatically, until 90 days after the date of termination.

(c) The United States shall indicate its acceptance of the lease offer, in whole or in part, and the issuance of the lease, by signature of the authorized officer on the current lease form. A signed copy of the lease shall be delivered to the offeror.

(d) Except as otherwise specifically provided in the regulations of this group, an offer that is not filed in accordance with the regulations in this part shall be rejected.

(e) Filing an offer on a lease form not currently in use, unless such lease form has been declared obsolete by the Director prior to the filing shall be allowed, on the condition that the offeror is bound by the terms and conditions of the lease form currently in use.

§ 3110.8 Amendment to lease.

After the competitive process has concluded in accordance with Subpart 3120 of this title, if any of the lands described in a lease offer for lands available during the 2-year period are open to oil and gas filing when the offer is filed but are omitted from the lease for any reason the original lease shall be amended to include the omitted lands unless, before the issuance of the amendment, the proper BLM office receives a withdrawal of the offer with respect to such lands or the offeror elects to receive a separate lease in lieu of an amendment. Such election shall be made by submission of a signed statement of the offeror requesting a separate lease, and a new offer on the required form executed pursuant to this part describing the remaining lands in the original offer. The new offer shall have the same priority as the old offer. No new application fee is required with the new offer. The rental payment held in connection with the original offer shall be applied to the new offer. The rental and the term of the lease for the lands added by an amendment shall be the same as if the lands had been included in the original lease when it was issued. If a separate lease is issued, it shall be dated in accordance with § 3110.3–2 of this title.

§ 3110.9 Future interest offers.

§ 3110.9–1 Availability.

A noncompetitive future interest lease shall not be issued until the lands covered by the offer have been made available for competitive lease under Subpart 3120 of this title. An offer made for lands that are leased competitively shall be rejected.

§ 3110.9–2 Form of offer.

An offer to lease a future interest shall be filed in accordance with this subpart, and may include tracts in which the United States owns a fractional present interest as well as the future interest for which a lease is sought.

§ 3110.9–3 Fractional present and future interest.

Where the United States owns both a present fractional interest and a future fractional interest in the minerals in the same tract, the lease, when issued, shall cover both the present and future interests in the lands. The effective date and primary term of the present interest lease is unaffected by the vesting of a future fractional interest. The lease for the future fractional interest, when such interest vests in the United States, shall have the same primary term and anniversary date as the present fractional interest lease.

§ 3110.9–4 Future interest terms and conditions.

(a) No rental or royalty shall be due to the United States prior to the vesting of the oil and gas rights in the United States. However, the future interest lessee shall agree that if he/she is or becomes the holder of any present interest operating rights in the lands:

(1) The future interest lessee transfers all or a part of the lessee's present oil and gas interests, such lessee shall file in the proper BLM office an assignment or transfer, in accordance with Subpart 3106 of this title, of the future interest lease of the same type and proportion as the transfer of the present interest, and

(2) The future interest lessee's present lease interests are relinquished, cancelled, terminated, or expired, the future interest lease rights with the United States also shall cease and terminate to the same extent.

(b) Upon vesting of the oil and gas rights in the United States, the future interest lease rental and royalty shall be as for any noncompetitive lease issued under this subpart, as provided in Subpart 3103 of this title, and the acreage shall be chargeable in accordance with § 3101.2 of this title.

Subparts 3111 and 3112 [Removed]

40. Subparts 3111 and 3112 are removed in their entirety.

41. Part 3120 is revised in its entirety to read:

PART 3120—COMPETITIVE LEASES

Subpart 3120—Competitive Leases

Sec.

3120.1 General.
3120.1–1 Lands available for competitive leasing.
3120.1–2 Requirements.
3120.1–3 Protests and appeals.
3120.2 Lease terms.
3120.2–1 Duration of lease.
3120.2–2 Dating of lease.
3120.2–3 Lease size.
3120.3 Nomination process.
3120.3–1 General.
3120.3–2 Filing of a nomination for competitive leasing.
3120.3–3 Minimum bid and rental remittance.
3120.3–4 Withdrawal of a nomination.
3120.3–5 Parcels receiving nominations.
3120.3–6 Parcels not receiving nominations.
3120.3–7 Refund.
3120.4 Notice of competitive lease sale.
3120.4–1 General.
3120.4–2 Posting of notice.
3120.5 Competitive sale.
3120.5–1 Oral auction.
3120.5–2 Payments required.

Sec.
3120.5–3 Award of lease.
3120.6 Parcels not bid on at auction.
3120.7 Future interest.
3120.7–1 Nomination to make lands available for competitive lease.
3120.7–2 Future interest terms and conditions.
3120.7–3 Compensatory royalty agreements.

Authority: Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 *et seq.*), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359), the Alaska National Interest Lands Conservation Act as amended (16 U.S.C. 3101 *et seq.*), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*), the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 *et seq.*), and the Attorney General's Opinion of April 2, 1941 (40 Op. Atty Gen. 41).

Subpart 3120—Competitive Leases

§ 3120.1 General.

§ 3120.1–1 Lands available for competitive leasing.

All lands available for leasing shall be offered for competitive bidding under this subpart, including but not limited to:

(a) Lands in oil and gas leases that have terminated, expired, been cancelled or relinquished.

(b) Lands for which authority to lease has been delegated from the General Services Administration.

(c) If, in proceeding to cancel a lease, interest in a lease, option to acquire a lease or an interest therein, acquired in violation of any of the provisions of the act, an underlying lease, interest or option in the lease is cancelled or forfeited to the United States and there are valid interests therein that are not subject to cancellation, forfeiture, or compulsory disposition, such underlying lease, interest, or option shall be sold to the highest responsible qualified bidder by competitive bidding under this subpart, subject to all outstanding valid interests therein and valid options pertaining thereto. If less than the whole interest in the lease, interest, or option is cancelled or forfeited, such partial interest shall likewise be sold by competitive bidding. If no satisfactory bid is obtained as a result of the competitive offering of such whole or partial interests, such interests may be sold in accordance with section 27 of the Act by such other methods as the authorized officer deems appropriate, but on terms no less favorable to the United States than those of the best competitive bid received. Interest in outstanding lease(s) so sold shall be subject to the terms and conditions of the existing lease(s).

(d) Lands which are otherwise unavailable for leasing but which are subject to drainage (protective leasing).

(e) Lands included in any expression of interest or noncompetitive offer, except offers properly filed within the 2-year period provided under § 3110.1(b) of this title, submitted to the authorized officer.

(f) Lands selected by the authorized officer.

§ 3120.1–2 Requirements.

(a) Each proper BLM Sate office shall hold sales at least quarterly if lands are available for competitive leasing.

(b) Lease sales shall be conducted by a competitive oral bidding process.

(c) The national minimum acceptable bid shall be $2 per acre or fraction thereof payable on the gross acreage, and shall not be prorated for any lands in which the United States owns a fractional interest.

§ 3120.1–3 Protests and appeals.

No action pursuant to the regulations in this subpart shall be suspended under § 4.21(a) of this title due to an appeal from a decision by the authorized officer to hold a lease sale. The authorized officer may suspend the offering of a specific parcel while considering a protest or appeal against its inclusion in a Notice of Competitive Lease Sale.

Only the Assistant Secretary for Land and Minerals Management may suspend a lease sale for good and just cause after reviewing the reason(s) for an appeal.

§ 3120.2 Lease terms.

§ 3120.2–1 Duration of lease.

Competitive leases shall have a primary term of 5 years.

§ 3120.2–2 Dating of leases.

All competitive leases shall be considered issued when signed by the authorized officer. Competitive leases, except future interest leases issued under § 3120.7 of this title, shall be effective as of the first day of the month following the date the leases are signed on behalf of the United States. A lease may be made effective on the first day of the month within which it is issued if a written request is made prior to the date of signature of the authorized officer. Leases for future interest shall be effective as of the date the mineral interests vest in the United States.

§ 3120.2–3 Lease size.

Lands shall be offered in leasing units of not more than 2,560 acres outside Alaska, or 5,760 acres within Alaska, which shall be as nearly compact in form as possible.

§ 3120.3 Nomination process.

The Director may elect to implement the provisions contained in §§ 3120.3–1 through 3120.3–7 of this title after review of any comments received during a period of not less than 30 days following publication in the Federal Register of notice that implementation of those sections is being considered.

§ 3120.3–1 General.

The Director may elect to accept nominations requiring submission of the national minimum acceptable bid, as set forth in this section, as part of the competitive process required by the act, or elect to accept informal expressions of interest. A List of Lands Available for Competitive Nominations may be posted in accordance with § 3120.4 of this title, and nominations in response to this list shall be made in accordance with instructions contained therein and on a form approved by the Director. Those parcels receiving nominations shall be included in a Notice of Competitive Lease Sale, unless the parcel is withdrawn by the Bureau.

§ 3120.3–2 Filing of a nomination for competitive leasing.

Nominations filed in response to a List of Lands Available for Competitive Nominations and on a form approved by the director shall:

(a) Include the nominator's name and personal or business address. The name of only one citizen, association or partnership, corporation or municipality shall appear as the nominator. All communications relating to leasing shall be sent to that name and address, which shall constitute the nominator's name and address of record;

(b) Be completed, signed in ink and filed in accordance with the instructions printed on the form and the regulations in this subpart. Execution of the nomination form shall constitute a legally binding offer to lease by the nominator, including all terms and conditions;

(c) Be filed within the filing period and in the BLM office specified in the List of Lands Available for Competitive Nominations. A nomination shall be unacceptable and shall be returned with all moneys refunded if it has not been completed and timely filed in accordance with the instructions on the form or with the other requirements in this subpart; and

(d) Be accompanied by a remittance sufficient to cover the national minimum acceptable bid, the first year's rental per acre or fraction thereof, and the administrative fee as set forth in

§ 3120.5–2(b) of this title for each parcel nominated on the form.

§ 3120.3–3 Minimum bid and rental remittance.

Nominations filed in response to a List of Lands Available for Competitive Nominations shall be accompanied by a single remittance. Failure to submit either a separate remittance with each form or an amount sufficient to cover all the parcels nominated on each form shall cause the entire filing to be deemed unacceptable with all moneys refunded.

§ 3120.3–4 Withdrawal of a nomination.

A nomination shall not be withdrawn, except by the Bureau for cause, in which case all moneys shall be refunded.

§ 3120.3–5 Parcels receiving nominations.

Parcels which receive nominations shall be included in a Notice of Competitive Lease Sale. The Notice shall indicate which parcels received multiple nominations in response to a List of Lands Available for Competitive Nominations, or parcels which have been withdrawn by the Bureau.

§ 3120.3–6 Parcels not receiving nominations.

Lands included in the List of Lands Available for Competitive Nominations which are not included in the Notice of Competitive Lease Sale because they were not nominated, unless they were withdrawn by the Bureau, shall be available for a 2-year period, for noncompetitive leasing as specified in the List.

§ 3120.3–7 Refund.

The minimum bid, first year's rental and administrative fee shall be refunded to all nominators who are unsuccessful at the oral auction.

§ 3120.4 Notice of competitive lease sale.

§ 3120.4–1 General.

(a) The lands available for competitive lease sale under this subpart shall be described in a Notice of Competitive Lease Sale.

(b) The time, date, and place of the competitive lease sale shall be stated in the Notice.

(c) The notice shall include an identification of, and a copy of, stipulations applicable to each parcel.

§ 3120.4–2 Posting of notice.

At least 45 days prior to conducting a competitive auction, lands to be offered for competitive lease sale, as included in a List of Lands Available for Competitive Nominations or in a Notice of Competitive Lease Sale, shall be posted in the proper BLM office having jurisdiction over the lands as specified in § 1821.2–1(d) of this title, and shall be made available for posting to surface managing agencies having jurisdiction over any of the included lands.

§ 3120.5 Competitive sale.

§ 3120.5–1 Oral auction.

(a) Parcels shall be offered by oral bidding. The existence of a nomination accompanied by the national minimum acceptable bid shall be announced at the auction for the parcel.

(b) A winning bid shall be the highest oral bid by a qualified bidder, equal to or exceeding the national minimum acceptable bid. The decision of the auctioneer shall be final.

(c) Two or more nominations on the same parcel when the bids are equal to the national minimum acceptable bid, with no higher oral bid being made, shall be returned with all moneys refunded. If the Bureau reoffers the parcel, it shall be reoffered only competitively under this subpart with any noncompetitive offer filed under § 3110.1(a) of this title retaining priority, provided no bid is received at an oral auction.

§ 3120.5–2 Payments required.

(a) Payments shall be made in accordance with § 3103.1–1 of this title.

(b) Each winning bidder shall submit, by the close of official business hours, or such other time as may be specified by the authorized officer, on the day of the sale for the parcel:

(1) The minimum bonus bid of $2 per acre or fraction thereof;

(2) The total amount of the first year's rental; and

(3) An administrative fee of $75 per parcel.

(c) The winning bidder shall submit the balance of the bonus bid to the proper BLM office within 10 working days after the last day of the oral auction.

§ 3120.5–3 Award of lease.

(a) A bid shall not be withdrawn and shall constitute a legally binding commitment to execute the lease bid form and accept a lease, including the obligation to pay the bonus bid, first year's rental, and administrative fee. Execution by the high bidder of a competitive lease bid form approved by the Director constitutes certification of compliance with Subpart 3102 of this title, shall constitute a binding lease offer, including all terms and conditions applicable thereto, and shall be required when payment is made in accordance with § 3120.5–2(b) of this title. Failure to comply with § 3120.5–2(c) of this title shall result in rejection of the bid and forfeiture of the monies submitted under § 3120.5–2(b) of this title.

(b) A lease shall be awarded to the highest responsible qualified bidder A copy of the lease shall be provided to the lessee after signature by the authorized officer.

(c) If a bid is rejected, the lands shall be reoffered competitively under this subpart with any noncompetitive offer filed under § 3110.1(a) of this title retaining priority, provided no bid is received in an oral auction.

(d) Issuance of the lease shall be consistent with § 3110.7 (a) and (b) of this title.

§ 3120.6 Parcels not bid on at auction.

Lands offered at the oral auction that receive no bids shall be available for filing for noncompetitive lease for a 2-year period beginning the first business day following the auction at a time specified in the Notice of Competitive Lease Sale.

§ 3120.7 Future interest.

§ 3120.7–1 Nomination to make lands available for competitive lease.

A nomination for a future interest lease shall be filed in accordance with this subpart.

§ 3120.7–2 Future interest terms and conditions.

(a) No rental or royalty shall be due to the United States prior to the vesting of the oil and gas rights in the United States. However, the future interest lessee shall agree that if, he/she is or becomes the holder of any present interest operating rights in the lands:

(1) The future interest lessee transfers all or a part of the lessee's present oil and gas interests, such lessee shall file in the proper BLM office an assignment or transfer, in accordance with Subpart 3106 of this title, of the future interest lease of the same type and proportion as the transfer of the present interest, and

(2) The future interest lessee's present lease interests are relinquished, cancelled, terminated, or expired, the future interest lease rights with the United States also shall cease and terminate to the same extent.

(b) Upon vesting of the oil and gas rights in the United States, the future interest lease rental and royalty shall be as for any competitive lease issued under this subpart, as provided in Subpart 3103 of this title, and the acreage shall be chargeable in accordance with § 3101.2 of this title.

§ 3120.7-3 Compensatory royalty agreements.

The terms and conditions of compensatory royalty agreements involving acquired lands in which the United States owns a future or fractional interest shall be established on an individual case basis. Such agreements shall be required when leasing is not possible in situations where the interest of the United States in the oil and gas deposit includes both a present and a future fractional interest in the same tract containing a producing well.

PART 3130—OIL AND GAS LEASING—NATIONAL PETROLEUM RESERVE—ALASKA

42. The authority citation for Part 3130 is revised to read:

Authority: The Department of the Interior Appropriations Act, Fiscal year 1981 (42 U.S.C. 6508), and the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*).

§ 3134.1 [Amended]

43. Section 3134.1(a) is amended by inserting the words "in accordance with the provisions of § 3104.1 of this title" after the word "bond" in the first sentence, and by removing the word "special" in the two places it appears in this paragraph.

PART 3160—ONSHORE OIL AND GAS OPERATIONS

44. The authority citation for Part 3160 is revised to read:

Authority: Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 *et seq.*), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359), the Act of May 21, 1930 (30 U.S.C. 301–306), Act of March 3, 1909, as amended (25 U.S.C. 369), the Act of May 11, 1938, as amended (25 U.S.C. 396a–396g), the Act of February 28, 1891, as amended (25 U.S.C. 397); the Act of May 29, 1924 (25 U.S.C. 398); The Act of March 3, 1927 (25 U.S.C. 398a–398e); the Act of June 30, 1919, as amended (25 U.S.C. 399); R.S. 441 (43 U.S.C. 1457); see also Attorney General's Opinion of April 2, 1941 (40 Op. Atty. Gen. 41); the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 *et seq.*), the National Environmental Policy Act of 1969 as amended (42 U.S.C. 4321 *et seq.*); the Department of the Interior Appropriations Act, Fiscal Year 1981 (42 U.S.C. 6508); the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 *et seq.*); and the Indian Mineral Development Act of 1982 (25 U.S.C. 2102).

44a. Section 3160.0–5 is amended by redesignating paragraph (v) as paragraph (w), and by inserting a new paragraph (v) to read as follows:

§ 3160.0–5 Definitions.

* * * * *

(v) "Surface use plan of operations" means a plan for surface use, disturbance, and reclamation.

Subpart 3162—Requirements for Lessees and Operators

45. Section 3162.3–1 is amended by revising paragraphs (d) and (e), by redesignating paragraphs (f) and (g) as (h) and (i), respectively, by adding new paragraphs (f) and (g), and by revising newly redesignated paragraphs (h) and (i), all to read as follows:

§ 3162.3–1 Drilling applications and plans.

* * * * *

(d) The Application for Permit to Drill process shall be initiated at least 30 days before commencement of operations is desired. Prior to approval, the application shall be administratively and technically complete. A complete application consists of Form 3160–3 and the following attachments:

(1) A drilling plan, which may already be on file, containing information required by paragraph (e) of this section and appropriate orders and notices.

(2) A surface use plan of operations containing information required by paragraph (f) of this section and appropriate orders and notices.

(3) Evidence of bond coverage as required by the Department of the Interior regulations, and

(4) Such other information as may be required by applicable orders and notices.

(e) Each drilling plan shall contain the information specified in applicable notices or orders, including a description of the drilling program, the surface and projected completion zone location pertinent geologic data, expected hazards, and proposed mitigation measures to address such hazards. A drilling plan may be submitted for a single well or for several wells proposed to be drilled to the same zone within a field or area of geological and environmental similarity. A drilling plan may be modified from time to time as circumstances may warrant, with the approval of the authorized officer.

(f) The surface use plan of operations shall contain information specified in applicable orders or notices, including the road and drillpad location, details of pad construction, methods for containment and disposal of waste material, plans for reclamation of the surface, and other pertinent data as the authorized officer may require. A surface use plan of operations may be submitted for a single well or for several wells proposed to be drilled in an area of environmental similarity.

(g) For Federal lands, upon receipt of the Application for Permit to Drill or Notice of Staking, the authorized officer shall post the following information for public inspection at least 30 days before action to approve the Application for Permit to Drill: the company/operator name; the well name/number; the well location described to the nearest quarter-quarter section (40 acres), or similar land description in the case of lands described by metes and bounds, or maps showing the affected lands and the location of all tracts to be leased and of all leases already issued in the general area; and any substantial modifications to the lease terms. Where the inclusion of maps in such posting is not practicable, maps of the affected lands shall be made available to the public for review. This information also shall be provided promptly by the authorized officer to the appropriate office of the Federal surface management agency, for lands the surface of which is not under Bureau jurisdiction, requesting such agency to post the proposed action for public inspection for at least 30 days. The posting shall be in the office of the authorized officer and in the appropriate surface managing agency if other than the Bureau. The posting of an Application for Permit to Drill is for information purposes only and is not an appealable decision.

(h) Upon initiation of the Application for Permit to Drill process, the authorized officer shall consult with the appropriate Federal surface management agency and with other interested parties as appropriate and shall take one of the following actions as soon as practical, but in no event later than 5 working days after the conclusion of the 30-day notice period for Federal lands, or within 30 days from receipt of the application for Indian lands:

(1) Approve the application as submitted or with appropriate modifications or conditions;

(2) Return the application and advise the applicant of the reasons for disapproval; or

(3) Advise the applicant, either in writing or orally with subsequent written confirmation, of the reasons why final action will be delayed along with the date such final action can be expected.

The surface use plan of operations for National Forest System lands shall be approved by the Secretary of Agriculture or his/her representative prior to approval of the Application for Permit to Drill by the authorized officer. Appeals from the denial of approval of such surface use plan of operations shall

be submitted to the Secretary of Agriculture.

(i) Approval of the Application for Permit to Drill does not warrant or certify that the applicant holds legal or equitable title to the subject lease(s) which would entitle the applicant to conduct drilling operations.

§ 3162.3-2 [Amended]

46. Section 3162.3-2(a) is amended by removing the phrase "A plan proposing" at the beginning thereof, and replacing it with the phrase "A proposal for", and by adding at the end of the first sentence thereof the words "to injection. If there is additional surface disturbance, the proposal shall include a surface use plan of operations.", and by revising the word "plan" in the last sentence thereof to read "proposal".

§ 3162.3-3 [Amended]

46a. Section 3162.3-3 is amended by removing the words "proposed plan of operations" and substituting therefor the word "proposal", and by adding at the end thereof the sentence, "The proposal shall include a surface use plan of operations."

§ 3162.3-4 [Amended]

46b. Section 3162.3-4(c) is amended by removing the phrase "rehabilitated or restored" from the last sentence thereof and substituting therefor the word "reclaimed".

§ 3162.5-1 [Amended]

46c. Section 3162.5-1(b) is amended by removing the phrase "restore or rehabilitate" from the last sentence thereof and substituting therefor the word "reclaim".

Subpart 3163—Noncompliance and Assessments

§ 3163.1 [Amended]

47. Section 3163.1(a)(5) is amended by removing the words "and forfeiture declared under the surety bond" from the second sentence.

Subpart 3164—Special Provisions

48. Section 3164.3(b) is amended by removing the initial word "The" and replacing it with the words "Except for National Forest System lands, the * * *".

48a. Section 3164.3 is amended by adding at the end thereof the following new paragraph (c):

§ 3164.3 Surface rights.

* * * * *

(c) On National Forest System lands, the Forest Service shall regulate all surface disturbing activities in accordance with Forest Service regulations, including providing to the authorized officer appropriate approvals of such activities.

PART 3180—[AMENDED]

Subpart 3184—[Removed and Reserved]

49. Subpart 3184 (consisting of § 3184.1) is removed and reserved.

§ 3184.1 [Removed and Reserved]

PART 3200—GEOTHERMAL RESOURCES LEASING; GENERAL

50. The authority citation for Part 3200 is revised to read:

Authority: Geothermal Steam Act of 1970, as amended (30 U.S.C. 1001-1025).

Subpart 3206—Lease Bonds

51. Section 3206.1-1 is revised to read:

§ 3206.1-1 Bond obligations.

(a) A surety of personal bond conditioned upon compliance with the terms and conditions of the entire leasehold(s) covered by the bond shall be submitted by the lessee, operating rights owner (sublessee), or operator prior to commencement of drilling operations.

(b) Surety bonds shall be issued by qualified surety companies approved by the Department of the Treasury (see Department of the Treasury Circular No. 570).

(c) Personal bonds shall be accompanied by:

(1) Certificate of deposit issued by a financial institution, the deposits of which are Federally insured, explicitly granting the Secretary full authority to demand immediate payment in case of default in the performance of the terms and conditions of the lease. The certificate shall explicitly state on its face the Secretarial approval is required prior to redemption of the certificate of deposit by any party;

(2) Cashier's check;

(3) Certified check;

(4) Negotiable Treasury securities of the United States of a value equal to the amount specified in the bond. Negotiable Treasury securities shall be accompanied by a proper conveyance to the Secretary of full authority to sell such securities in case of default in the performance of the terms and conditions of a lease; or

(5) Irrevocable letter of credit issued by a financial institution, the deposits of which are Federally insured, for a specific term, identifying the Secretary as sole payee with full authority to demand immediate payment in case of default in the performance of the terms and conditions of a lease. Letters of credit shall be subject to the following conditions:

(i) The letter of credit shall be issued only by a financial institution organized or authorized to do business in the United States;

(ii) The letter of credit shall be irrevocable during its terms. A letter of credit used as security for any lease upon which drilling has taken place and final approval of all abandonment has not been given, or as security for a statewide or nationwide lease bond, shall be forfeited and shall be collected by the authorized officer if not replaced by other suitable bond or letter of credit at least 30 days before its expiration date;

(iii) The letter of credit shall be payable to the Bureau of Land Management upon demand, in part or in full, upon receipt from the authorized officer of a notice of attachment stating the basis therefor, e.g., default in compliance with the lease terms and conditions of failure to file a replacement in accordance with paragraph (c)(5)(ii) of this section;

(iv) The initial expiration date of the letter of credit shall be at least 1 year following the date it is filed in the proper BLM office; and

(v) The letter of credit shall contain a provision for automatic renewal for periods of not less than 1 year in the absence of notice to the proper BLM office at least 90 days prior to the originally stated or any extended expiration date.

§§ 3206.4, 3206.4-1, 3206.4-2, and 3206.4-3 [Removed]

52. Sections 3206.4, 3206.4-1, 3206.4-2, and 3206.4-3 are removed in their entirety.

§ 3206.5 [Redesignated as § 3206.4 and Revised]

53. Section 3206.5 is redesignated as § 3206.4 and revised to read:

§ 3206.4 Statewide bond.

In lieu of bonds required under this subpart, the lessee, operating rights owner (sublessee), or operator may furnish a bond in an amount of not less than $50,000 for full statewide coverage for all geothermal leases in the applicable State.

§ 3206.6 [Redesignated as § 3206.5 and Revised]

54. Section 3206.6 is redesignated § 3206.5 and revised to read:

§ 3206.5 Nationwide bond.

In lieu of bonds required under this subpart, the lessee, operating rights

owner [sublessee], or operator may furnish a bond in an amount of not less than $150,000 for full nationwide coverage for all geothermal leases.

55. Section 3606.6 is added to read as follows:

§ 3206.6 Unit operator's bond.

In lieu of individual lease, statewide, or nationwide bonds for operations conducted on leases committed to an approved unit agreement, the unit operator may furnish a unit operator bond in the manner set forth in § 3206.1–1 of this title. The amount of such a bond shall be determined by the authorized officer. The format for such a surety bond is set forth in § 3286.2 of this title. Where a unit operator is covered by a nationwide or statewide bond, coverage for such a unit may be provided by a rider to such bond specifically covering the unit and increasing the bond in such amount as may be determined appropriate by the authorized officer.

PART 3280—GEOTHERMAL RESOURCES UNIT AGREEMENTS—UNPROVEN AREAS

56. The authority citation for Part 3280 is revised to read:

Authority: Geothermal Steam Act of 1970, as amended (30 U.S.C. 1001–1025).

Subpart 3284 [Removed and Reserved]

57. Subpart 3284 (consisting of § 3284.1) is removed and reserved.

§ 3284.1 [Removed and Reserved]

[FR Doc. 88–13680 Filed 6–16–88; 8:45 am]
BILLING CODE 4310–84–M

ACTION: Final rulemaking, correction.

SUMMARY: This document corrects typographical and editorial mistakes made in the final rulemaking on oil and gas leasing and geothermal leasing published in the Federal Register on May 16, 1988 (53 FR 17340). Also, Additional corrections may be found in a document published by the Federal Register elsewhere in this issue.

EFFECTIVE DATE: June 15, 1988.

ADDRESS: Inquires or suggestions should be sent to: Director (500), Bureau of Land Management, Room 5647, Main Interior Bldg., 1800 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Lois Mason, (202) 653–2190.

In the corrections listed below, the item numbers correspond to the item numbers in the original final rulemaking. The following corrections are made in the final rulemaking on Oil and Gas Leasing and Geothermal Resources Leasing, published in the Federal Register on May 16, 1988 (53 FR 17340):

34. On page 17355, first column, at the end of this item, add the words, " and by removing from where it appears the word 'condition' and replacing it with the word 'conditions' ".

67. On page 17359, first column, in paragraph E. of this time, at line 3 thereof, change "assignor" to "assignee".

72. On page 17361, third column, in § 3154.3, insert the word "have" between "permit" and "been" at line 5 thereof, so that the line reads: "notice of intent or permit have been met."

110. On page 17365, third column, in paragraph B, remove the word "that" from the third line from the end, so that the phase being removed reads: "by a working interest owner obtains".

117. On page 17367, second column, in line 13 of § 3200.2, change "estate" to "estates", and in the next to last line of § 3200.2, insert the word "Act" between "Management" and "of".

145. On page 17368, second column, the last sentence of § 3206.1–2, "For unit bond forms see subpart 3284 of this title.", is removed.

154. On page 17370, first column, in line 1 insert the word "on" between the quotation mark and the word "unleased".

August 9, 1988.

James E. Cason,

Deputy Assistant Secretary of the Interior.

[FR Doc. 88–18906 Filed 8–19–88; 8:45 am]

BILLING CODE 4310–84–M

43 CFR Parts 3000, 3100, 3110, 3120, 3130, 3160, 3180, 3200, and 3280

[AA–620–88–4111–01–24–10; Circular No. 2608]

Minerals Management; General: Oil and Gas Leasing: Noncompetitive Leases: Competitive Leases: Oil and Gas Leasing—National Petroleum Reserve—Alaska: Onshore Oil and Gas Operations: Onshore Oil and Gas Unit Agreements—Unproven Areas: Geothermal Resources Leasing; General: Geothermal Resources Unit Agreements—Unproven Areas

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking; correction; interpretation.

SUMMARY: This document corrects typographical and editorial errors in the final rulemaking implementing the Federal Onshore Oil and Gas Leasing Reform Act of 1987 (the Reform Act), published in the Federal Register on June 17, 1988 (53 FR 22814). This document also provides further interpretation of that rulemaking with regard to (1) the need for consent of a surety for an operator to be covered by a lessee's statewide or nationwide bond, and (2) whether a future interest lessee who holds the present interest lease and assigns or loses it also assigns or loses the future interest lease.

EFFECTIVE DATE: June 17, 1988.

ADDRESS: Inquiries or suggestions should be sent to: Director (500), Bureau of Land Management, Room 5647, Main Interior Bldg., 1800 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Judith I. Reed, (202) 653–2190.

SUPPLEMENTARY INFORMATION: In addition to the correction made below, this document responds to public inquiries requesting clarification of certain provisions of the final rulemaking published in the Federal Register on June 17, 1988, implementing the Reform Act. Further corrections of printing errors may also be found in a notice published by the Federal Register elsewhere in this issue.

Since promulgation of the final rulemaking on June 17, 1988, the Bureau of Land Management has been requested to clarify whether the provision of the last sentence of § 3104.2, which states that the "operator on the ground shall be covered by a bond in his/her own name as principal, or a bond in the name of the lessee or sublessee, provided that a consent of the surety, or the obligor in the case of a personal bond, to include the operator under the coverage of the bond is furnished to the Bureau office maintaining the bond", applies with equal force to statewide and nationwide bonds provided for in § 3104.3.

Because a statewide or nationwide bond is a substitute form of bond allowing lessees and sublessees to proceed without multiple individual lease bonds, the requirement that operators provide a consent of surety to conduct operations under coverage of another party's bond applies equally to both individual lease bonds and statewide or nationwide bonds.

The Bureau has also been requested to clarify the portions of §§ 3110.9–4(a)(2) and 3120.7–2(a)(2) that require Federal future interest lessees who also are present interest lessees of the same lands to lose their future interest leases to the same extent that their interest in the present interest lease is lost through expiration, termination, cancellation, and relinquishment.

Prior to this rulemaking, future interest lessees have been required, as a condition precedent to issuance of their lease, to subscribe to a supplemental agreement providing that the loss of the present interest lease, to the extent that the lessee held any such present interest, would cause the loss of the future interest lease to the same extent. While the rulemaking eliminated the old supplemental agreement, whose primary function was to prescribe rentals and royalties due prior to the vesting of the interest of the United States, the other provisions of the agreements governing assignments remain in effect.

From the viewpoint of the lessor, it is advantageous and in the public interest the assure that there is a smooth transition between the present interest lessee and the future interest lessee at the time the basic ownership vests in the United States. This is done by ensuring that the present interest lessee is also the future interest lessee. However, in a competitive situation, the United States cannot ensure that that transition would be smooth when the present interest owner fails to become the high bidder and, as a result, the future interest owner. Even so, it remains in the public interest to provide, whenever possible, for a smooth transition that does not threaten production and the royalty income stream. Accordingly, it has always been and remains policy that when a future interest lessee holding the present interest lease assigns or loses the present interest lease, he/she also assigns or loses the future interest lease.

The Bureau of Land Management expects that the prudent present interest lessee will logically acquire the future interest lease to protect any investment

in production. The present interest lessee can obtain the future interest lease by outbidding others present at the oral auction. A common, if not universal, provision of the present interest fee leases is for continuation of the lease so long as the lease is producing. Most present interest lessees should logically seek to develop their present lease once they have obtained the future interest lease.

In short, the future interest regulations promote two policy objectives: competitiveness and continuity. The destruction of this continuity is sufficient reason to cause the loss of the future interest lease and to allow the United States to expose the future interest to competitive bidding again, where the new present interest owner has a fair opportunity to acquire the future interest lease and thus reestablish the continuity.

Accordingly, the Department of the Interior has no present plans to amend §§ 3110.9 or 3120.7, as they currently accomplish these policy objectives.

The following corrections are made in the final rulemaking implementing the Reform Act that was published on June 17, 1988 (53 FR 22814):

1. On page 22840, middle column, the amendatory language of Item 37 is corrected by revising it to read as follows:

37. Section 3108.3 is amended by revising paragraph (a), redesignating paragraph (b) as paragraph (d), removing paragraph (c), and adding new paragraphs (b) and (c), to read as follows:

2. In line 1 of § 3110.5–5 (page 22843, first column), change "variations" to "variation".

August 9, 1988.

James E. Cason,

Deputy Assistant Secretary of the Interior.

[FR Doc. 88–18905 Filed 8–19–88; 8:45 am]

BILLING CODE 4310–84–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA–6933]

Changes in Flood Elevation Determinations; Maryland and New Jersey

AGENCY: Federal Insurance Administration, Federal Emergency Management Agency.

ACTION: Interim rule.

SUMMARY: This rule lists those communities where modification of the base (100-year) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base (100-year) elevations for new buildings and their contents and for second layer insurance on existing buildings and their contents.

DATES: These modified elevations are currently in effect and amend the Flood Insurance Rate Map (FIRM) in effect prior to this determination.

From the date of the second publication of notice of these changes in a prominent local newspaper, any person has ninety (90) days in which he can request through the community that the Administrator, reconsider the changes. These modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base (100-year) flood elevation determinations are available for inspection at the office of the Chief Executive Officer of the community, listed in the fifth column of the table. Send comments to that address also.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2767.

SUPPLEMENTARY INFORMATION: The numerous changes made in the base (100-year) flood elevations on the FIRM(s) make it administratively infeasible to publish in this notice all of the modified base (100-year) flood elevations contained on the map. However, this rule includes the address of the Chief Executive Officer of the community where the modified base (100-year) flood elevation determinations are available for inspection.

Any request for reconsideration must be based on knowledge of changed conditions, or new scientific or technical data.

These modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234) and are in accordance with the National Flood Insurance Act of 1968, as amended, (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR 65.4.

For rating purposes, the revised community number is listed and must be used for all new policies and renewals.

These base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program.

These elevations, together with the floodplain management measures required by § 60.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time, enact stricter requirements on its own, or pursuant to policies established by other Federal, State or regional entities.

The changes in the base (100-year) flood elevations listed below are in accordance with 44 CFR 65.4.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains.

PART 65—[AMENDED]

The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, E.O. 12127.

§ 65.4 [Amended]

Section 65.4 is amended by adding in alphabetical sequence new entries to the table.

Corrections

Federal Register
Vol. 53, No. 162
Monday, August 22, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Parts 1405 and 1421

Loans, Purchases and Other Operations; Grains and Similarly Handled Commodities

Correction

In proposed rule document 88-18160 beginning on page 30068 in the issue of Wednesday, August 10, 1988, on page 30071, in the second column, in the file line at the end of the document, "FR Doc. 88-16160" should read "FR Doc. 88-1816".

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[ERA Docket No. 88-24-NG]

Western Gas Marketing U.S.A. Ltd.; Order Granting Blanket Authorization To Import and Export Natural Gas

Correction

In notice document 88-18399 appearing on page 30711 in the issue of Monday, August 15, 1988, the Docket Number in the heading should read as it appears above.

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3000, 3100, 3110, 3120, 3160, and 3200

[AA-620-88-4111-01-24-16, Circular No. 2608]

Minerals Management; General Oil and Gas Leasing; Noncompetitive Leases; Competitive Leases; Oil and Gas Leasing—National Petroleum Reserve—Alaska; Onshore Oil and Gas Operations; Onshore Oil and Gas Unit Agreements—Unproven Areas; Geothermal Resources Leasing; General: Geothermal Resources Unit Agreements—Unproven Areas

Correction

In rule document 88-13680 beginning on page 22814 in the issue of Friday, June 17, 1988, make the following corrections:

PART 3000—[CORRECTED]

1. On page 22835, in the second column, in amendatory instruction 2, in the first line, "2000.0-5" should read "3000.0-5".

PART 3100—[CORRECTED]

2. On the same page, in the third column, in amendatory instruction 5, in the seventh line, "(b)92)(vi)" should read "(b)(2)(vi)".

§ 3100.0-3 [Corrected]

3. On page 22836, in the first column, in § 3100.0-3(a)(2)(x), in the third line, "Executive" was misspelled.

4. On the same page, in the same column, in amendatory instruction 6, in the last line "U.S.C. 6506" should read "U.S.C. 6508".

§ 3101.1-4 [Corrected]

5. On the same page, in the third column, in § 3101.1-4, in the sixth line, "require" should read "required"; and in the next to last line, "a least a" should read "at least a".

§ 3103.2-1 [Corrected]

6. On page 22837, in the third column, in § 3103.2-1(a), in the eighth line, "years" should read "year's".

§ 3104.3 [Corrected]

7. On page 22839, in the first column, in § 3104.3(a), in the first line, after "lessees" insert a comma; and in the next to last line, "covering" was misspelled.

§ 3107.2-3 [Corrected]

8. On page 22840, in the first column, in § 3107.2-3, in the last line, "to so. * * *" should read "to do so. * * *".

PART 3110—[CORRECTED]

9. On page 22840, in the third column, in the third line from the bottom, in the "Authority", "supplemental" should read "supplemented".

§ 3110.1 [Corrected]

10. On page 22841, in the first column, in § 3110.1(b), in the 11th line, "§ 3120.23-1" should read "§ 3120.3-1".

§ 3110.3-1 [Corrected]

11. On the same page, in the second column, in § 3110.3-1, in the second line, "days" should read "years".

§ 3110.4 [Corrected]

12. On page 22842, in the first column, in § 3110.4(a), in the second line, "§ 3109.9" should read "§ 3110.9"; and in the fifth line, "remittance" should read "remittances"; and in the sixth line, "shall obtain" should read "shall not obtain".

PART 3120—[CORRECTED]

§ 3120.3-2 [Corrected]

13. On page 22844, in the third column, in § 3120.3-2, introductory text, in the last line, "director" should read "Director".

PART 3160—[CORRECTED]

§ 3162.3-1 [Corrected]

14. On page 22846, in the second column, in § 3162.3-1(e), in the fifth line, after "location" insert a comma.

PART 3200—[CORRECTED]

§ 3206.1-1 [Corrected]

15. On page 22847, in the third column, in § 3206.1-1(c)(5)(iii), in the eighth line, "conditions of" should read "conditions or".

BILLING CODE 1505-01-D

Sunshine Act Meetings

Federal Register
Vol. 53, No. 162
Monday, August 22, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

TENNESSEE VALLEY AUTHORITY

[Meeting No. 1406]

TIME AND DATE: 10 a.m. (CDT), Wednesday, August 24, 1988.

PLACE: Legislative Plaza, Senate Hearing Rooms 12–14, Capitol Boulevard, Nashville, Tennessee.

STATUS: Open.

AGENDA

Approval of minutes of meeting held on July 20, 1988.

Action Items

Old Business

1. Final Rate Review.

New Business

A—Budget and Financing

A1. Fiscal Year 1989 Capital Budget Financed from Power Proceeds and Borrowings, Comprising Expenditures for Ongoing and New Projects During the Fiscal Year and the Estimated Total Project Cost for Those Projects.

A2. Fiscal Year 1988 Operating Budget Financed from Power Revenues.

[1] A3. Modification of the Capital Budget Financed from Power Proceeds and Borrowings for Fiscal Year 1988—Construction of a Double-Circuit, 161 kV Transmission Line from Collinsville to Leesburg, Alabama.

[1] A4. Modification of the Capital Budget Financed from Power Proceeds and Borrowings for Fiscal Year 1988—Safety Improvements on Overhead Cranes—Sequoyah Nuclear Plant.

[1] A5. Modification of the Capital Budget Financed from Power Proceeds and Borrowings for Fiscal Year 1988—Final Safety Analysis Report Verification.

[1] A6. Modification of the Capital Budget Financed from Power Proceeds and Borrowings for Fiscal Year 1988—Develop a Qualified Component List (Q-List)—Sequoyah Nuclear Plant.

A7. Proposed Increase in Borrowing Commitment with Seven States Energy Corporation and the Federal Financing Bank Under the Nuclear Fuel Leasing Arrangements.

B—Purchase Awards

B1. Negotiation GB–06284A—Electrostatic Fly Ash Collectors and Auxiliary Equipment for Colbert Fossil Plant.

C—Power Items

C1. Contract with Individual Power Distributors for Repair of Major Electrical Equipment at Power Service Shops.

D—Personnel Items

[1] D1—Supplement to Consulting Contract TV–74236A with Bishop, Cook, Purcell and Reynolds to Provide Advice and Consultation with Respect to Legal Matters.

E—Real Property Transactions

[1] E1. Option to NASA for Yellow Creek Site.

E2. Filing of Condemnation Cases.

E3. Resolution for the Waste Bar Reservoir Land Management Plan.

E4. Proposed Land Exchange Affecting Fontana Reservoir Land Transferred by TVA to the U.S. Department of Agriculture, Forest Service, Under Contract TV–1721A.

E5. Grant of a Permanent Easement for an Access Road Affecting Approximately 0.13 Acres of Douglas Reservoir Land Located in Jefferson County, Tennessee.

E6. Proposed Sale of Three Noncommercial, Nonexclusive Permanent Recreation Easements Affecting 0.30 Acres of Tellico Reserve Shoreline in Monroe County, Tennessee.

F—Unclassified

[1] F1. Changes in Composition of List of Agency Officials Authorized to Certify Vouchers.

F2. Proposed Modification in Procurement Code to Allow for Increased Competitive Negotiation.

F3. Supplement to Memorandum of Agreement No. TV–64520A Between TVA and U.S. Environmental Protection Agency to Finalize External Peer Review of the National Precipitation Assessment Program 1985 Emissions Inventory.

F4. Supplement to Contract No. TV–75239A with U.S. Department of Army, Lexington-Blue Grass Army Depot, for Continuing the Production of a Digital Data Base.

F5. Supplement to Contract No. TV–67038A with U.S. Department of Agriculture, Forest Service, to Continue the Collection of Data From its Whitetop Mountain Monitoring Site.

F6. Agreement Between TVA and U.S. Department of the Army, Corps of Engineers, Memphis District, for Relocation and Report Preparation on Endangered Mussel Species in the St. Francis River Basin.

F7. Revision to TVA Code Relating to Employee Recognition.

CONTACT PERSON FOR MORE INFORMATION: Alan Carmichael, Director of Information, or a member of his staff can respond to requests for information about this meeting. Call (615) 632–8000, Knoxville, Tennessee. Information is also available at TVA's Washington Office, (202) 245–0101.

Dated: August 17, 1988.

William L. Osteen, Jr.,

Associate General Counsel and Assistant Secretary.

[FR Doc. 18–19059 Filed 8–18–88 11:59 am]

BILLING CODE 8120–01–M

[1] Items approved by individual Board members. This would give formal ratification to the Board's action.

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3100, 3130, 3150, 3160, 3180, 3200, and 3220

[AA-620-88-4111-01, Circular No. 2606]

Oil and Gas Leasing, Geothermal Resources Leasing

Correction

In rule document 88-10808 beginning on page 17340 in the issue of Monday, May 16, 1988, make the following corrections:

PART 3130—[CORRECTED]

§ 3135.1-3 [Corrected]

1. On page 17359, in the second column, in § 3135.1-3, in the heading, "Separating" should read "Separate".

PART 3150—[CORRECTED]

§ 3150.0-5 [Corrected]

2. On page 17360, in the first column, in § 3150.0-5(b), in the next to the last line, remove "and".

§ 3152.7 [Corrected]

3. On page 17361, in the first column, in § 3152.7, the second paragraph should be designated "(1)".

PART 3160—[CORRECTED]

§ 3162.3 [Corrected]

4. On page 17363, in the second column, in § 3162.3(b), in the seventh line, insert a comma after "NTL's".

5. On page 17365, in the first column, in amendatory instruction "C.", in the second line, "paragraph" was misspelled.

PART 3180—[CORRECTED]

§ 3186.1 [Corrected]

6. On page 17365, in the third column, in § 3186.1, in the paragraph following amendatory instruction A. to Section 9, in the second line, "participating" was misspelled.

7. On page 17366, in amendatory instruction "E.", in the ninth line, "If" should read "If the".

PART 3200—[CORRECTED]

§ 3200.1 [Corrected]

8. On page 17367, in the first column, in § 3200.1(c), in the fourth line, after "by" insert "the"; and in the seventh line from the bottom, "other" should read "another".

§ 3206.2 [Corrected]

9. On page 17369, in the second column, in § 3206.2, in the seventh line, "principals" was misspelled.

PART 3220—[CORRECTED]

§ 3220.2-2 [Corrected]

10. On page 17370, in the second column, in § 3220.2-2, in the second line, "information" was misspelled.

§ 3220.3 [Corrected]

11. On the same page, in the same column, in § 3220.3, in the seventh line, "appropriate" was misspelled.

PART 3100—[CORRECTED]

Group 3100—[Corrected]

12. On page 17375, in the second column, under "**Group 3100**", in the note, in the seventh line, "1104-0074" should read "1004-0074".

BILLING CODE 1505-01-D

and Regulatory Management, Bureau of Land Management.

[redacted] hereby determined that this final [redacted]king does not constitute a major [redacted]al action significantly affecting the quality of the human environment, and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) The Bureau of Land Management sells timber valued at approximately $100 million annually, but this rulemaking will affect only a minimal proportion of those sales, and not every year. The last incident to occur to which this proposed procedure would have been an appropriate response was 25 years ago. Also, all purchasers will be affected equally, regardless of size.

This rulemaking does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

[redacted]f Subjects

43 CFR Part 5460

Forest and forest products, Government contracts, Land Management Bureau, Public lands.

43 CFR Part 5470

Forest and forest products, Government contracts, Land Management Bureau, Public lands, Reporting and recordkeeping requirements.

Under the authority of section 5 of the Act of August 28, 1937 (43 U.S.C. 1181e), and the Act of July 31, 1947, as amended (30 U.S.C. 601 *et seq.*), Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below:

PARTS 5460 AND 5470—[AMENDED]

The interim rule amending 43 CFR Parts 5460 and 5470 which was published at 52 FR 42586 on November 5, 1987, is adopted as a final rule without change.

James E. Cason,

Deputy Assistant Secretary of the Interior.

July 11, 1988.

[Doc. 88–18575 Filed 8–16–88; 8:45 am]

[redacted] CODE 4310–84–M

43 CFR Part 8340

[Circular No. 2609; AA–340–08–4333–02]

Off-Road Vehicles; Clarifying Amendments

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking amends the existing regulations covering the use of off-road vehicles on the public lands. These regulations were issued by the Department of the Interior as proposed rulemaking and published in the Federal Register on July 17, 1987 (52 FR 27017) with a public comment period of 60 days. Three comments were received and considered during the development of this final rulemaking. This final rulemaking revises the regulations in 43 CFR Part 8340 to clarify some definitions used in the existing regulations and simplify the designation process.

EFFECTIVE DATE: September 16, 1988.

ADDRESS: Inquiries or suggestions should be sent to: Assistant Director—Land & Renewable Resources (220), Bureau of Land Management, Room 5626, Main Interior Bldg., 1800 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Robert Schneider, (202) 343–9353.

SUPPLEMENTARY INFORMATION: This final rulemaking amends the existing regulations for managing off-road vehicles on the public lands by making definitions more compatible with the actual on-the-ground experiences and with existing land use planning decisions, and eliminating the requirement for publication of a separate notice of off-road vehicle area designation in the Federal Register.

The proposed rulemaking was published in the Federal Register on July 17, 1987 (52 FR 27017), with a 60 day comment period. During the 60 day comment period, 3 comments were received from associations.

One commenter agreed that the wording of the proposed rulemaking simplified the wording of the existing regulations and expressed the hope that the revisions would provide for greater understanding and compliance among off-highway vehicle users.

Another commenter believed the changes did not reduce the BLM's ability to regulate use of off-road vehicles and correctly placed responsibility for the planning of such use within the Bureau's overall land use planning processes, but expressed concern with the lack of reference to a means of notifying the public regarding the designation of lands. The commenter felt that voluntary compliance with closures and limits must be emphasized, and that such compliance is dependent upon awareness among recreationists about where their activities are inappropriate as well as appropriate.

Neither the proposed nor the final rulemaking have eliminated the notification of the public concerning designation of the public lands for off-road vehicles. Rather they have simplified the process by eliminating one step. As was discussed in the preamble of the proposed rulemaking, the identification, evaluation, and designation of public lands for off-road vehicle use is accomplished through the Bureau of Land Management's resource management (land use) planning process as described in 43 CFR Part 1600. This process also integrates the environmental impact statement and environmental assessment requirement of the Council of Environmental Quality's regulations (40 CFR Parts 1500–1508) that implement provisions of the National Environmental Policy Act. Both the Bureau's land use planning regulations and the Council of Environmental Quality's regulations provide for publication of advisory and descriptive Federal Register notices concerning the availability of all these documents for public review and input, making unnecessary the requirement for and expense of the separate notice required by the existing off-road vehicle regulations. And finally, the record of decision for each planning document discusses the off-road, vehicle designations. The public will receive adequate notice of the designations through these documents.

In addition to this concern, the commenter also recommended that consideration be given to changing the terminology for describing the vehicles from "off-road vehicles" to "off-highway vehicles" in a future amendment to the regulation. It was felt that this language would cover a wider range of recreational vehicles, would help eliminate the implication that all of these vehicles are designed solely for use off of existing roads and trails, which they are not, and would be consistent with the term many states now use in registering these vehicles. This recommendation has been noted by the BLM and a change in terms will be considered in a future revision of the regulations.

A final comment recommended that the proposed changes not be adopted. The commenter specifically took issue with the amendment of the first sentence of § 8341.2(a), objecting to the deletion of the words "or trails" from

the phrase "close the areas or trails affected". Two reasons were given for the objection. First, the commenter felt that it is difficult and perhaps impossible to identify all ORV trails and areas that are subject to designation in the BLM's resource management plans because the draft planning and environmental analysis documents do not always address route designations on a road by road basis. Furthermore, the commenter stated that the final Resource Management Plan and Environmental Impact Statement may be changed from the draft documents, and changes and oversights in route or area designations may go unnoticed until it is too late. Secondly, the identification of routes on the ground is more difficult where numerous routes exist. The commenter stated that since the BLM does not mark the routes subject to restrictions, it is nearly impossible in some heavily roaded areas to determine which routes are affected. In some cases this has resulted in the wrong routes being closed. The commenter concluded by stating that the present procedure is the best way for the public to participate in the ORV route designation process.

In reviewing this comment it was felt that a misunderstanding had occurred concerning the BLM's position and that a clarification is necessary. The designation process deals with areas, not individual roads and trails. If an area is closed, all roads and trails in that area are closed to off-road vehicle use. If an area is designated as limited, how the roads and trails are identified depends on the limitations placed on the area. For example, if an area designation is limted to "designated roads and trails", then those roads and trails designated for use will be identified on maps and on the ground as necessary. The change in the rulemaking does not preclude the identification of specific roads and trails for off-road vehicle use. It also does not change the public participation process used to identify which roads and trails would remain available for use but with a limited designation.

After considering the comments, it was decided to adopt, without change, the wording of the proposed rulemaking.

The principal author of this final rulemaking is Richard Traylor, Division of Recreation, Cultural, and Wilderness Resources, Bureau of Land Management, assisted by the staff of the Division of Legislation and Regulatory Management, Bureau of Land Management.

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human enviromment and that no detailed statements pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

The changes made by this final rulemaking will benefit the using public in that they simplify and clarify the designation process. The changes will impact all users equally, whether large or small.

There are no information collection requirements in the changes made by this final rulemaking to 43 CFR Part 8340 which require approval of the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 43 CFR Part 8340

Public lands, Recreation and recreation areas, Traffic regulations.

Under the authority of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*), the Taylor Grazing Act (43 U.S.C. 315a), the Endangered Species Act (16 U.S.C. 1531 *et seq.*), the Wild and Scenic Rivers Act (16 U.S.C. 1281c), the Act of September 15, 1960, as amended (16 U.S.C. 670 *et seq.*), the Land and Water Conservation Fund Act (16 U.S.C. 4601–6a), the National Trails System Act (16 U.S.C. 1241 *et seq.*) and Executive Order 11644 (Use of Off-Road Vehicles on the Public Lands) (37 FR 2877, 3 CFR Part 74, 332), as amended by Executive Order 11989 (42 FR 26959), Part 8340, Group 8300, Subchapter H, Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below:

James E. Cason,

Acting Assistant Secretary of the Interior.

July 20, 1988.

PART 8340—[AMENDED]

1. The authority citation for Part 8340 continues to read:

Authority: 43 U.S.C. 1201, 43 U.S.C. 315a, 16 U.S.C. 1531 et seq., 16 U.S.C. 1281c, 16 U.S.C. 670 *et seq.*, 16 U.S.C. 4601–6a, 16 U.S.C. 1241 *et seq.* and 43 U.S.C. 1701 *et seq.*

2. Section 8340.0–5 is amended by revising paragraphs (f), (g) and (h) to read:

§ 8340.0–5 Definitions

* * * * *

(f) "Open area" means an area where all types of vehicle use is permitted at all times, anywhere in the area subject to the operating regulations and vehicle standards set forth in Subparts 8341 and 8342 of this title.

(g) "Limited area" means an area restricted at certain times, in certain areas, and/or to certain vehicular use. These restrictions may be of any type, but can generally be accommodated within the following type of categories: Numbers of vehicles; types of vehicles; time or season of vehicle use; permitted or licensed use only; use on existing roads and trails; use on designated roads and trails; and other restrictions.

(h) "Closed area" means an area where off-road vehicle use is prohibited. Use of off-road vehicles in closed areas may be allowed for certain reasons; however, such use shall be made only with the approval of the authorized officer.

§ 8341.2 [Amended]

3. Section 8341.2(a) is amended by removing from where it appears in the first sentence thereof the phrase "close the areas or trails affected" and replacing it with the phrase "close the areas affected".

4. Section 8342.2 is revised to read:

§ 8342.2 Designation procedures.

(a) *Public participation.* The designation and redesignation of trails is accomplished through the resource management planning process described in Part 1600 of this Title. Current and potential impacts of specific vehicle types on all resources and uses in the planning area shall be considered in the process of preparing resource management plans, plan revisions, or plan amendments. Prior to making designations or redesignations, the authorized officer shall consult with interested user groups, Federal, State, county and local agencies, local landowners, and other parties in a manner that provides an opportunity for the public to express itself and have its views given consideration.

(b) *Designation.* The approval of a resource management plan, plan revision, or plan amendment constitutes formal designation of off-road vehicle use areas. Public notice of designation or redesignation shall be provided through the publication of the notice required by § 1610.5–1(b) of this Title. Copies of such notice shall be available to the public in local Bureau offices.

(c) *Identification of designated areas and trails.* The authorized officer shall, after designation, take action by marking and other appropriate measures to identify designated areas and trails so that the public will be aware of locations and limitations applicable

thereto. The authorized officer shall make appropriate informational material, including maps, available for review.

[Doc. 88-18574 Filed 8-16-88; 8:45 am]

BILLING CODE 4310-84-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 25

[CGD 87-016]

Emergency Position Indicating Radio Beacons for Uninspected Fishing, Fish Processing, and Fish Tending Vessels

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending the uninspected vessel regulations by requiring emergency position indicating radio beacons (EPIRBs) to be carried on uninspected fishing, fish processing, and fish tender vessels operating on the high seas. The Coast Guard Authorization Act of 1986 amended the shipping laws of the United States by requiring those vessels to have the number and type of EPIRBs prescribed by regulation. By implementing the law, the regulations will ensure rapid and effective search and rescue during emergency situations.

EFFECTIVE DATE: October 3, 1988.

ADDRESSES: Between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays, comments are available for inspection and copying at the Marine Safety Council (C-CMC) Room 2110, U.S. Coast Guard Headquarters, 2100 Second St., SW., Washington, DC 20593-0001, (202) 267-1477. The Final Evaluation may also be inspected or copies at the Marine Safety Council.

FOR FURTHER INFORMATION CONTACT: LCDR Stanford W. Deno, Survival Systems Branch, Room 1404, U.S. Coast Guard Headquarters, 2100 Second St. SW., Washington, DC 20593-0001, (202) 267-1444. Normal office hours are between 7:30 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: On November 10, 1986, the Ninety-Ninth Congress passed Pub. L. 99-640, known as the "Coast Guard Authorization Act of 1986" (100 Stat. 3545). Section 16 of that Act amended Section 4102 of Title 46 of the United States Code by adding paragraph (e) which requires uninspected fishing, fish processing, and fish tender vessels operating on the high seas carry the number and type of EPIRBs prescribed by regulation. This Final Rule implements that law. A Notice of Proposed Rulemaking (NPRM) was published in the **Federal Register** on September 3, 1987 (52 FR 33448) and invited comments for a 45 day period ending October 19, 1987. On October 16, 1987, the comment period was extended for one month to expire on November 19, 1987. Notice of that extension was published in the **Federal Register** on October 22, 1987 (52 FR 39546). Twenty-six comments were received. Two comments expressed a general objection to the concept of requiring EPIRBs on fishing vessels, while eight comments generally supported the proposal. A discussion of the other, more specific comments follows.

Drafting Information.

The principal persons involved in drafting these regulations are: LCDR William M. Riley, Project Manager, and Mr. Stanley Colby, Project Counsel, Office of Chief Counsel.

Discussion

Definition of "high seas" Several comments asked for clarification of the term "high seas." In addition to the written comments, many telephone calls expressed confusion about the applicability of 3 mile, 12 mile, and 200 mile limits as well as the boundary lines for international and inland "rules of the road."

High seas are simply international waters as defined in 33 CFR 2.05-1(a); that is, waters which are neither U.S. territorial waters nor territorial waters of another country. The U.S. still claims only a 3-mile territorial waters boundary. The "12 mile limit" refers to the Contiguous Zone, a band of high seas within 9 miles of the territorial waters over which nations traditionally exert limited authority. Similarly, the "200 mile limit" refers to the Exclusive Economic Zone, a band of the high seas over which the U.S. unilateraly asserts authority to regulate fisheries and seabed mining under the Magnuson Fishery Conservation and Management Act, as amended (16 USC 1801, *et. seq.*)

Definition of "fishing vessel" A number of comments also requested definition of the term "fishing vessel." Three written comments and a significant number of telephone comments addressed this issue. Several asked whether pleasure boats engaged in sport fishing were considered "fishing vessels." Others asked whether small passenger vessels and party fishing boats were affected by these rules. One comment asked whether inspected small passenger vessels not carrying passengers for hire, but fishing commercially on a particular voyage, would be affected. Another asked if "fishing" included clamming, dredging oysters, and catching shrimp.

"Fishing vessel," "fish processing vessel," and "fish tender vessel" are defined by law in 46 USC 2101. Recreational boats are regulated under 33 CFR Subchapter S. The regulations being amended, in Part 25 of 46 CFR Subchapter O, apply only to uninspected commercial vessels such as fishing boats and tugboats. Therefore pleasure boats are not affected. Small passenger vessels, carrying more than six passengers, are *inspected* under 46 CFR Subchapter T, and are therefore not affected by this rule. However, small passenger vessels temporarily operating as uninspected fishing vessels are subject to these rules. Commercial party fishing boats carrying six or less passengers for hire are uninspected and are regulated under 46 CFR Subchapter O. However, it is not the intent of these rules to require EPIRBs on such vessels, unless they too are operating temporarily to harvest fish rather than to carry passengers. The definition of "fish" (46 USC 2101(11)), which is applicable to uninspected vessels (46 USC Chapter 41), includes finfish, mollusks, crustaceans, and all other forms of marine animal and plant life, except marine mammals and birds.

Cost Five comments stated that the estimated cost of $800 in the proposed rule for satellite EPIRBs was to low. Four of these comments included alternate costs estimates, ranging from $1000 to $2200. The most credible of these estimates was $1450, from a manufacturer who intends to introduce a satellite EPIRB at that price. We believe this price will gradually decrease as other suppliers enter the market. The estimate of $1450 has been accepted and incorporated into the Final Evaluation.

Phase-out period Sixteen comments addressed the proposed phase-out period for existing EPIRBs. Two comments supported the proposed 10-year phase-out period. Six comments supported the alternative proposal of 6 years contained in the preamble of the NPRM. Two comments suggested a period of 5 years. Three comments suggested a period of 3 years. One comment suggested a period of 2 years. Two comments objected to any phase-out period at all. Since the satellite EPIRBs are so far superior to the existing EPIRBs, and the existing EPIRBs are relating inexpensive, and there seems to be general support for a shorter phase-put period than 10 years, the final rule has been rewritten to include a 6-year phase-out period.

authorization to operate its hazardous waste program as revised.

Mississippi now has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out other aspects of the RCRA-program, subject to the limitation of its revised program application and previously approved authorities. Mississippi also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA and to take enforcement actions under sections 3008, 3013 and 7003 of RCRA.

Mississippi is today seeking authority to administer the following Federal requirements promulgated prior to June 6, 1986.

Federal requirement	Federal promulgation date
Biennial Reports	Jan. 28, 1983.
Permit Rules—Settlement Agreement.	Sept. 1, 1983.
Interim Status Standards—Applicability.	Nov. 22, 1983.
Chlorinated Aliphatic Hydrocarbon Listing.	Feb. 10, 1984.
National Uniform Manifest	Mar. 20, 1984.
Permit Rules—Settlement Agreement.	Apr. 24, 1984.
Interim Status Standards—Applicability.	Nov. 21, 1984.
Corrections to Test Methods Manual.	Dec. 4, 1984.
Redefinition of Solid Waste	Jan. 4, 1984.
Interim Status Standards for Landfills.	Apr. 23, 1985.
Closure, Post-Closure and Financial Responsibility Requirements.	May 2, 1986.
Listing of Spent Pickle Liquor	May 28, 1986.
State Availability of Information—Section 3006(f).	Nov. 8, 1984.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 4 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Mississippi's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous Waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: July 14, 1988.

Joe R. Franzmathes,

Acting Regional Administrator.

[FR Doc. 88-18478 Filed 8-16-88; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF INTERIOR

Bureau of Land Management

43 CFR Parts 5460 and 5470

[AA-230-07-6310-02; Circular No. 2610]

Sales Administration; Contract Modification—Extension—Assignment

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This rulemaking adopts as final the interim amendments to 43 CFR Parts 5460—Sales Administration, and 5470—Contract Modification—Extension—Assignment. Those amendments concern the extension of time for cutting and removing contract timber in limited circumstances and conditions resulting from fires and other natural disasters.

EFFECTIVE DATE: November 5, 1987.

ADDRESS: Suggestions or inquiries should be sent to: Director (230), Bureau of Land Management, Department of the Interior, 1800 'C' Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT:
Dave Estola, (503) 231-6837

or

Gary Ryan, (202) 653-8864.

SUPPLEMENTARY INFORMATION: Disastrous fires in August and September, 1987, in southwestern Oregon damaged a volume of timber exceeding, in preliminary field estimates, a third of a billion board feet. In order to allow salvage of as much of the value of this damaged timber as possible, this rulemaking was published on an interim final basis on November 5, 1987 (52 FR 42586), effective the date of publication. The public was invited to comment on the rulemaking for 60 days ending January 4, 1988.

The Bureau of Land Management received 1 comment from a business entity. This letter raised several concerns as to implementation of the regulations, but offered no objection to the regulations themselves. Accordingly, the interim final rulemaking published on November 5, 1987, is republished today without amendment to the regulatory language, effective on the date of original publication, November 5, 1987. The regulations in this rulemaking will be applied in all subsequent situations caused by natural or other disasters.

First, the comment suggested that the regulations should be implemented in a manner that does not distinguish between pre- and post-1982 timber sale contracts. This comment has already been adopted in Bureau implementation guidance for fire salvage extensions, which does not distinguish between contracts signed before and after 1982.

Second, the comment urged that extensions of BLM timber contracts should be allowed where purchasers harvest salvage timber from lands administered by the Forest Service. This comment will not be adopted. The Bureau has a unique timber receipt sharing arrangement with the western Oregon counties. Granting reciprocal extensions for Forest Service salvage sales would delay the collection of BLM timber receipts and cause an adverse impact on local economies.

Third, the comment suggested that extensions of BLM timber sale contracts should be allowed for the harvest of salvage timber from Federal lands lying beyond the purchaser's normal marketing area. This comment will not be adopted in implementation of these regulations. If extensions were granted without market area limitations, an abnormal market situation would be created. Purchasers holding expensive pre-1982 contracts would tend to bid on sales outside their usual market area in order to obtain extensions of their pre-1982 contracts, contrary to the public interest in completing those contracts so that the timber management program can continue in an orderly manner.

Finally, the comment suggested that § 5463.2(b) should be implemented in a manner allowing "pass-through" extensions from a non-manufacturing timber purchaser to an entity with milling capabilities. This comment is not adopted because pass-through extensions would have a doubling effect on the amount of extension credit, and would be difficult to administer. Under BLM regulations both companies in a pass-through situation would be entitled to extension credits, which would amount to a doubling of the credits.

The principal authors of this final rulemaking are Dave Estola, Oregon State Office, and Gary Ryan, Division of Forestry, Washington Office, assisted by the staff of the Division of Legislation

(2) Three (3) readings lasting 3–5 minutes shall be taken at each stationary position. This allows enough information to be gathered so that more reliable results will be obtained. In some cases where results are inconclusive, additional readings over longer time periods may be required by the Director.

(3) Stationary readings, as previously described, shall be taken at the base of each USDW, and adjacent to the confining layer which isolates injection fluids to the injection zone.

(4) If any significant flow indication is observed, the well shall fail the test, i.e. does not establish mechanical integrity pursuant to 40 CFR 146.8(a)(2).

(5) The Oxygen Activation Method shall not be used in wells with pipe diameters less than $1^{15}/_{16}$ inches (inside diameter).

(6) At this time, the Oxygen Activation Method shall be used only for pipe diameters up to 13⅜ inches. However, during the interim approval period, the Agency solicits data on the application of this testing method for large diameter wells.

Informational Requirements of the Test

During the interim approval period, EPA is requesting affected State UIC Directors to make certain determinations and supply necessary information for effective evaluation of this test as follows:

(1) The results of the testing must include the following descriptive information: test date, well operator's name, well name and number, county, and state. In addition, the information must indicate the calibration of the logging instrument, background determination, the number, location, and duration of stationary readings, and an interpretation of the data collected.

(2) If the Director chooses to require or allow the use of the OA tool, he shall submit a recommendation to the Office of Drinking Water, or the Region, based on the results obtained during the interim period for the Oxygen Activation Method. The recommendation shall outline any limitations, procedures, and criteria necessary to assure effective testing.

Determination

The Oxygen Activation Method, subject to the conditions and procedures discussed in this notice, provides the necessary information to demonstrate reliably whether a well has significant fluid movement through vertical channels adjacent to the well bore. EPA is approving this test for well classes I through V in all States. After the two year interim approval period, EPA will make a final determination on whether this test is an effective alternative mechanical integrity test for well Classes I through V in all States.

Date: September 20, 1988.

Michael B. Cook,

Director, Office of Drinking Water.

[FR Doc. 88–21774 Filed 9–23–88; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 146

[FRL–3453–2]

Underground Injection Control Program; Extension of Water-in-Annulus Mechanical Integrity Test Interim Approval

AGENCY: Environmental Protection Agency.

ACTION: Notice of alternative method; extension of interim approval.

SUMMARY: Notice is given today that the Director of the Office of Drinking Water, Environmental Protection Agency (EPA), has granted an additional extension of six (6) months from September 26, 1988 for the use of an alternative to the tests specified in § 146.8(b) to test the mechanical integrity of an injection well's tubular goods. This mechanical integrity test (MIT), known as the water-in-annulus test, has been approved only for existing Class II enhanced recovery wells in specific counties in the States of New York and Pennsylvania. This extension of the interim approval is necessary for further evaluation on the test's sensitivity, reliability, and effectiveness.

EFFECTIVE DATE: This approval extends for a period of six months from September 26, 1988.

ADDRESSES: Any comments concerning the extension of interim approval should be addressed to Bruce J. Kobelski, EPA, Office of Drinking Water (WH–550), 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Bruce J. Kobelski, EPA, Office of Drinking Water, Washington, DC 20460, (202) 382–7275; or S. Stephen Platt, U.S. EPA, Region III, Drinking Water/Ground Water Protection Branch, 841 Chestnut Building, Philadelphia, Pennsylvania 19107, (215) 597–2537.

SUPPLEMENTARY INFORMATION: On July 14, 1987, the EPA published in the Federal Register (52 FR 26342) a one year extension of interim approval for the water-in-annulus mechanical integrity test. This test has been approved for existing Class II enhanced recovery wells (existing wells are those wells which were in operation prior to June 25, 1984) located in Allegheny, Cattaraugus, and Steuben Counties in New York, and Elk, Forest, McKean, Potter, Venango, Warren, and Washington Counties in Pennsylvania (49 FR 29375).

The July 14, 1987 Federal Register notice (52 FR 26342) included the description of the test, procedures for conducting the test, and the interpretation of test results.

At this time, the Agency has determined that additional data concerning the test's sensitivity and reliability is needed in order to confirm its effectiveness for assessing mechanical integrity. Therefore, EPA is extending its interim approval of this test for six months until March 27, 1989.

During this extension of interim approval, additional testing comparing the water-in-annulus test with existing approved MITs will be conducted. When the information collected has been evaluated, the Agency will make a final determination concerning this test.

Dated: September 18, 1988.

Michael B. Cook,

Director, Office of Drinking Water.

[FR Doc. 88–21775 Filed 9–23–88; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Mangement

43 CFR Part 3450

[AA–660–08–4121–02; Circular No. 2611]

Management of Existing Leases; Continuation of Leases—Readjustment of Terms

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking revises the existing regulations at 43 CFR Subpart 3451 by: 1) Eliminating the practice of allowing coal leases to file objections to readjusted lease terms and conditions; 2) requiring that, as of the effective date of the lease readjustment, the lessee must make rental and royalty payments at the readjusted rates; and 3) clarifying that the notification to the Governor of the affected State is by copy of the readjusted terms and conditions. Readjusted rentals and royalties will no longer be allowed to accrue during the pendency of an appeal to the Office of Hearing and Appeals, Department of the Interior. This Final rulemaking will ensure that the lease terms and conditions conform to the requirements of the Federal Coal

Leasing Amendments Act of 1976, as amended.

EFFECTIVE DATE: September 26, 1988.

ADDRESS: Inquiries or suggestions should be sent to: Director (660), Bureau of Land Management, Room 3411, Main Interior Building, 1800 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Paul W. Politzer, (202) 343–7722 or Pamela J. Lewis, (202) 343–7722.

SUPPLEMENTARY INFORMATION: A proposed rulemaking containing revisions to 3 paragraphs of 43 CFR 3451.2 was published in the Federal Register on December 8, 1987 (52 FR 46499), with a 60-day comment period. During that comment period, comments were received from 10 sources, with 3 coming from business, 4 coming from associations, 1 from an attorney, 1 from a Federal agency, and 1 from a State agency. All of the comments were given careful consideration during the preparation of this final rulemaking. The **SUPPLEMENTARY INFORMATION** preamble to that proposed rulemaking is incorporated herein in its entirety, to the extent not modified by this **SUPPLEMENTARY INFORMATION.**

This final rulemaking eliminates the notice of readjusted terms and conditions and replaces this notice with a decision transmitting the readjusted terms and conditions. The decision will be sent to the Federal coal lessee prior to the anniversary of the date on which the Federal coal lease is subject to readjustment.

In general, the comments received were unfavorable to the changes made in the proposed rulemaking and evidenced confusion on the part of the writers as to the intent of the Department of the Interior with respect to eliminating the filing of objections to readjusted lease terms and conditions. The elimination of the filing of *objections* with the Bureau of Land Management State Offices regarding the notice of readjusted lease terms and conditions in no way diminishes the rights of a Federal coal lessee to *appeal* the Bureau of Land Management's final lease readjustment action to the Interior Board of Land Appeals (IBLA). Any action taken by the Bureau of Land Management that a Federal coal lessee believes to be adverse to him is appealable to IBLA. However, the Bureau of Land Management will no longer entertain objections protesting the readjustment of a coal lease. This will ensure that the lease terms and conditions conform to the requirements of the Federal Coal Leasing Amendments Act of 1976, as amended (FCLAA) (90 Stat. 1083–1092) on the annivesary date.

Two comments requested that the final rulemaking state that it will have "no effect on leases no longer before the Department of the Interior on administrative appeal and that agreements to post bonds to protect the interest of the Federal Government while an appeal remains pending before the courts continue in full force and effect." The Bureau of Land Management rejected these requests for the following reasons.

At this time there are approximately 57 Federal coal leases with readjustment appeals pending before IBLA and another 39 Federal coal leases with readjustment appeals that have been elevated to either the District or Circuit Court level. Of these Federal coal leases, less than 5 percent are paying the higher readjusted rental and royalty rates while in the appeal process. In addition, on January 28, 1987, IBLA issued an order (*Ark Land Co.*, IBLA 86–1449) that specifically states that, under the current regulations, until IBLA fully adjudicates the merits of a readjustment appeal before it, the Bureau of Land Management may not increase the lease bond to cover the accrual of the higher readjusted rental and royalty amounts. See *Ark Land Co.*, 97 IBLA 241, 248 (1987), referring to and explaining the January 28, 1987, order.

One of the purposes of this rulemaking is to eliminate the accrual of these moneys during the appeal process. The IBLA order has effectively stopped the Bureau of Land Management from protecting the interests of the Federal Government through the use of adequate bonding. Therefore, this rulemaking applies to all Federal coal leases regardless of where they are in the appeal process.

This final rulemaking removes the provision in the existing regulations that allows the accrual of rentals and royalties during the pendency of an appeal of a Federal coal lease readjustment for the reasons cited above.

Section 6 of FCLAA amended section 7 of the Mineral Leasing Act (MLA) (30 U.S.C. 207) to require that Federal coal leases be readjusted to a production royalty rate of not less than 12½ percent of the gross value of all coal mined. However, the Secretary of the Interior was given the discretion to set a lesser royalty rate than 12½ percent for coal recovered by using underground methods. A production royalty of at least 8 percent, but not less than 5 percent if conditions warrant, of the gross value of coal mined using underground methods is currently provided for at 43 CFR Subparts 3451 and 3473.

The Office of the Solicitor has interpreted section 6 of FCLAA as requiring that the readjusted terms and conditions of all Federal coal leases issued prior to August 4, 1976, and subject to readjustment of their terms and conditions after that date, are required to comply with the requirements of FCLAA (Solicitor's Opinion M–36939, 88 I.D. 1003 (1981)).

This final rulemaking eliminates the process under which a Federal coal lessee files objections with the Bureau of Land Management State Offices regarding readjusted terms and conditions. Readjusted terms and conditions become applicable to pre-FCLAA Federal coal leases upon their first adjustment under FCLAA. Standard lease terms and conditions are not subject to objection by the Federal coal lessee because they have already been the subject of public review and comment under the Administrative Procedures Act (40 U.S.C. 760, *et seq.*) (see the Final Federal Coal Lease Form, Part I, Sections 1 and 2, and Part II, Sections 1 through 14; see also the Coal Management; Federally Owned Coal; Amendments to Coal Management Program Regulations (47 FR 33114, July 30, 1982) and Coal Exploration and Mining Operations (47 FR 33154, July 30, 1982)). The basis for all special stipulations added to a Federal coal lease upon readjustment is also required by law and regulation (e.g., protection of the environment in wilderness study areas.)

The removal of the provisions allowing an objection to be filed with the Bureau of Land Management State Offices regarding lease terms and conditions for readjusted Federal coal leases will result in administrative cost savings by the Bureau of Land Management of approximately $80,000 each fiscal year.

The U.S. Court of Appeals for the Tenth Circuit held that the mandatory terms and conditions established by section 6 of FCLAA are required to be included in a Federal coal lease at the time of readjustment (*FMC Wyoming Corp. v. Hodel*, 816 F.2d 496 (10th Cir. 1987); *Coastal States Energy Co. v. Hodel*, 816 F.2d 502 (10th Cir. 1987)). In both *FMC* and *Coastal*, the Tenth Circuit affirmed the Bureau of Land Management's policy and procedures regarding readjustment of Federal coal leases issued prior to the enactment of FCLAA. The Tenth Circuit held that notice sent to a Federal coal lessee prior to the anniversary date for readjustment of the Federal coal lease, which stated

the Bureau's intent to readjust the Federal coal lease, constitutes a timely exercise of the Bureau of Land Management's right to readjust, even if the readjustment terms are not finalized until after the anniversary date. "Anniversary date" in this preamble and in these final regulations refers to the date on which the coal lease is readjusted. Prior to enactment of FCLAA, this occurred every 20 years; since enactment of FCLAA, the readjustments occur at the end of the first 20 years following lease issuance and every 10 years thereafter. The Tenth Circuit also held that when the Bureau of Land Management readjusts a pre-FCLAA Federal coal lease after 1976, the Bureau is required to impose the statutory terms enacted in FCLAA, including a royalty rate not less than 12½ percent of the value of coal produced by surface methods. In *Coastal*, the 10th Circuit applied the *FMC* holdings and also ruled that the Secretary of the Interior has "broad authority" to readjust other terms of Federal coal leases. The Tenth Circuit specifically upheld as reasonable and within the discretionary authority of Secretary of the Interior 3 readjustment terms not required by FCLAA—an increased bonding requirement, a change from "monthly to quarterly ntal" [sic] payments, and the removal f the right to credit rental against royalty payments.

On October 6, 1987, FMC petitioned the U.S. Supreme Court to review the decision of the Tenth Circuit. The U.S. Supreme Court denied certiorari on January 25, 1988 (108 S.Ct. 772 (1988)). Therefore, the holdings in *FMC* and *Coastal* are dispositive on the readjustment of Federal coal leases, despite the fact that several Federal coal lessees have filed suit in the U.S. District Court for the District of Columbia in an attempt to obtain judgments conflicting with the Tenth Circuit's decisions in *FMC* and *Coastal.*

Several comments stated that during the pendency of an appeal of readjusted terms and conditions, the lessee would be denied the time value of its money. One comment stated further that "the preference of [IBLA] is to not make orders regarding payments final until an appeal has been heard * * * [and that] during the pendency of that appeal, the rentals and royalties that are not 'required by statute or regulation' should be accrued and should not become immediately payable." The lessee is not denied any time value of its money. The Tenth Circuit's *FMC* and *Coastal* ions ratified the Department of the or's interpretation that the increased royalty and rental rates imposed by FCLAA are to be applied to pre-FCLAA Federal coal leases on this first post-FCLAA anniversary date. The effect of these decisions is that on the anniversary date, the increased amount of money owed to the United States because of the new rental and royalty rates is due and payable to the Federal Government at that time. The IBLA decisions relied upon in the comments (*Marathon Oil Co.*, 94 IBLA 78, September 30, 1986, and *Marathon Oil Co.*, 90 IBLA 236, January 30, 1986), interpreted the regulations of the Minerals Management Service on royalty payment during an appeal from a decision establishing the amount of royalty due. Such appeals generally involve case-specific issues. Here, the regulation rate sets out the royalty rate to include in readjusted leases, a rate which the courts have ratified. As explained elsewhere in this preamble, the public interest demands that payment at the readjusted royalty rate commence with the effective date of the readjustment:

Paragraph 3451.2(e) (1985) allowed the accrual of rentals and royalties during the pendency of an appeal to IBLA only, not after an IBLA decision had been rendered upholding the new rates. Paragraph 3452.1(e) stated, in relevant part: "However, during the pendency of the appeal, royalties and rentals shall accrue under the readjustment lease terms and shall be payable if the decision is upheld on appeal, * * *" The "appeal" referred to is limited to the administrative appeal within the Department of the Interior, not to judicial appeals of final Department of the Interior decisions (*Ark Land Co.*, 97 IBLA 241, 248–249 (1987)). That provision has been amended in this final rulemaking to state that as of the effective date of the readjustment, rentals and royalties will no longer be allowed to accrue during the pendency of any administrative review. As stated previously, as of the effective date of the readjustment, the moneys belong to the Federal Government and are due and payable at that time. See *FMC Wyoming Corp. v. Hodel*, 816 F.2d 496 (10th Cir. 1987), *cert. denied* (108 S. Ct. 772 (1988)) and *Coastal States Energy Co. v. Hodel*, 816 F.2d 502 (10th Cir. 1987). These comments were rejected.

One comment stated that the "proposed change is particularly unfair to * * * electric utilities * * * and their customers, because they will now have to pay *immediately*, through their electric bills, royalty rates which may ultimately be disapproved, or changed, either through the appeal process, regulatory changes, or by legislation." (Emphasis in original.) This is incorrect. Regardless what the applicable rental and royalty payment obligations are, they are always payable immediately, based on sales of coal that has been mined. The statutory minimum royalty rate of 12½ percent for surface-mined coal has been in the law since August 4, 1976, and the regulatory minimum royalty rate of 8 percent (but not less than 5 percent if conditions warrant) for underground-mined coal has been in the Federal coal lease forms since 1976 and in the regulations since 1979. Under the *FMC* and *Coastal* decisions, the imposition of the FCLAA rates on pre-FCLAA Federal coal leases on their first post-FCLAA anniversary date has been judicially approved. If these rates are changed in the future because of court precedent or amendments to FCLAA, the Department of the Interior will address those changes at that time. If the underground royalty rate is changed through regulations, the Department of the Interior will, at that time, address the effect of the royalty rate change on already readjusted leases with underground coal reserves.

One comment stated, "Because it is possible that the Bureau would not deliver the new terms and conditions to the lessee until nearly two years after the anniversary date (when the lessee would be required to commence payment of a readjusted rate), the lessee's account would be in arrears regarding the adjusted rental or royalty *without his knowledge.*" (Emphasis added.) Since late 1984, the Bureau of Land Management has, by internal procedure, been providing the initial notice of intent to readjust to the lessees 2 years prior to the anniversary date and the notice of readjusted terms and conditions 6 months prior to the anniversary date. Those procedures remain unchanged by this final regulation, except that the notice of readjusted terms and conditions is replaced by a decision transmitting the readjusted terms. Moreover, the initial notice of intent to readjust, which is delivered to the Federal coal lessee 2 years prior to the anniversary date, incorporates the regulations regarding the FCLAA royalty and rental rates. Accordingly, Federal coal lessees have been afforded substantial advance notice of the new royalty rates, before the anniversary date. This allows the opportunity to forecast future impacts of the readjusted royalty rate required by FCLAA and to plan accordingly. For these reasons, these two comments were rejected.

Several comments addressed the potential bifurcation in the appeal process that was contained in the proposed rulemaking. One comment stated, "Clearly, BLM's refusal to accommodate a lessee's individual situation upon readjustment deserves administrative review." The intended meaning of the proposed rulemaking was that the readjustment decision constituted the final action by the Bureau of Land Management. The provision for filing objections with the Bureau regarding special stipulations has been removed as addressed above. Therefore, no bifurcation remains in this final rulemaking. The lessee retains both the opportunity for administrative review through appeal to IBLA and judicial review to the courts having jurisdiction over the leases.

Several comments stated a desire that "agreements to post bonds to protect the interests of the government while an appeal remains pending before the courts continue in full force and effect." This final rulemaking no way amends the regulations for payment of rentals and royalties to the Minerals Management Service. However, those readjusted rentals and royalties will now be due and payable as of the effective date of the readjustment, regardless of appeal of IBLA or the filing of a civil suit. It is the Minerals Management Service's decision whether to require payment or allow lessees to post bonds to cover the accruing royalties and rentals during administrative appeal, if any. If the decision is made to allow the payment obligation to be covered by a Federal coal lease bond, then the Bureau of Land Management will then adjust the affected bond in accordance with established procedures.

One comment stated, "Bond amounts require the exercise of judgment in both methodology and actual calculation. The amount, factors considered, and how these factors are supplied should be subject to administrative review upon readjustment." The existing regulations related to bonding remain unchanged by this final rulemaking. Those regulations, and the Bureau of Land Management's right to adjust or increase the bonding requirement at the time of readjustment, were addressed by the Tenth Circuit Court of Appeals. The Tenth Circuit specifically upheld as reasonable and as within the discretionary authority of the Secretary of the Interior three adjustment terms not specifically required by FCLAA; one of those terms was an increased bonding requirement. Procedures for determining the appropriate amount of a Federal coal lease bond to be adjusted periodically to reflect the type and phase of ongoing operations, if any, are not regulatory in nature. Therefore, they are not set forth in any regulation, nor will they be in the future. However, formerly informal procedures were made standard procedures for the bonding of all Federal coal leases and have been utilized by all Bureau of Land Management State Offices since December 13, 1985. Therefore, this comment was rejected.

One comment stated that the "Tenth Circuit language in *Coastal States Energy* merely applies to that lease." This is clearly not the case. While specifically applying only to the Federal coal leases at issue in these cases, the Tenth Circuit's decisions in both *FMC* and *Coastal* are dispositive of the same legal issues for all Federal coal lease readjustments within the jurisdiction of the Tenth Circuit. This, of course, includes increased rental and royalty rates, timeliness of readjustment decisions, increased bonding requirements, the deletion of the procedure allowing rentals to be credited against royalties, and the change from quarterly to monthly royalty payments. This appears to be the reason that several lessees have filed their judicial challenges in the U.S. District Court for the District of Columbia—an attempt to obtain conflicting decisions. The Bureau of Land Management believes that the Tenth Circuit's decisions are dispositive of all of the more than 150 administrative and judicial challenges that have been taken for Federal coal lease readjustments since 1981 and those decisions will continue to be applied to all Federal coal lease readjustments.

One comment stated that "the proposed elimination of review of the imposition of all standard lease terms and conditions is inconsistent with 43 CFR 3475.1. This rule allows for modification of standard terms or conditions not required by statute or regulation." The provisions of the Final Coal Lease Form, that have been in use by all Bureau of Land Management State Offices since March 30, 1984 (see 49 FR 12753), are all required by statute or regulation. See the earlier discussion on the Final Federal Coal Lease Form. Therefore, § 3475.1 is not inconsistent with this final rulemaking. This comment was rejected.

One comment stated that "BLM has not articulated any reason that the existing provision has caused any hardship on the agency. For instance, have substantial amounts of accrued royalties become uncollectible after appeals are decided?" As of June 30, 1988, outstanding accrued rentals and royalties from all readjusted Federal coal leases totaled approximately $134,615,000, an increase of $11,000,000 in the previous 3 months, with an approximate outstanding interest balance of more than $20,000,000. Of the $134,615,000, at least one half is to be returned to the affected States as payments in lieu of taxes. It is estimated that at least one Federal coal lessee may have to declare bankruptcy when all of its appeals have been exhausted, a situation that could have been avoided had the rentals and royalties been paid in a timely manner instead of having been allowed to accrue since the effective date of the readjustments. However, the actual factor that may result in a declaration of bankruptcy is not the owed rentals and royalties; it is the interest that has accrued during the administrative and judicial challenges. Some of this interest due has been accumulating since 1981. As a result, in one State as much as $50,000,000 in owed Federal rentals and royalties may not be fully realized.The potential default of such accruing royalties, rentals, and interest is the reason for this final rulemaking. For this reason, this comment was rejected.

One comment stated that "if BLM will retain the interest regardless of whether the protest succeeds, then BLM will have an incentive to delay its processes since it will have the interest value regardless of the ultimate outcome and that interest will increase over time." First, the Bureau of Land Management does not retain any interest; it is payable to the Treasury of the United States. The Bureau of Land Management has absolutely no incentive to seek a delay in the payment of readjusted rentals and royalties owed the Federal Government. Second, as addressed previously, especially in the response to the comment immediately preceding this one, it is the Federal coal lessees that have sought the delay in the effective date of the readjustments through administrative and judicial challenges that continue to be taken, some of which have been pending for more than 7 years.

The same comment further stated that the "problem of accrued interest may be especially acute * * * in requests for relief under Section 14 of FCLAA, 30 U.S.C. 209, which might not be processed before the royalty increase becomes effective." Requests for a royalty rate reduction pursuant to 30 U.S.C. 209 are totally separate and distinct from readjustments of Federal coal leases pursuant to 30 U.S.C. 207(a).

Such royalty rate reductions are sought for the purpose of relief from the readjusted royalty rate and cannot be made part of the readjustment document. The royalty rate in the readjusted lease terms and conditions is either the statutory *minimum* of 12½ percent or the regulatory *minimum* of 8 percent (but not less than 5 percent if conditions warrant). Royalty rate reductions are granted, when warranted under the conditions set out in 30 U.S.C. 209, to provide relief from these statutory and regulatory minimums. This comment was rejected.

This final rulemaking also makes it clear that the notification to the Governor of the affected State is by copy of the readjusted terms and conditions. Existing § 3451.1(c)(2) has also been amended editorially to reflect changes made in this final rulemaking.

The principal authors of this final rulemaking are Pamela J. Lewis and Allen B. Agnew, Division of Solid Mineral Operations, assisted by other field and Washington Office staff, staff of the Division of Legislation and Regulatory Management, all of the Bureau of Land Management, and staff of the Office of the Solicitor, Department of the Interior.

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*).

The economic impacts of this final rulemaking will not exceed the economic threshold of Executive Order 12291 and the rulemaking will impact all Federal coal lessees equally, regardless of their size.

This final rulemaking contains no information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 43 CFR Part 3450

Coal, Government contracts, Intergovernmental relations, Mines, Public Lands—mineral resources, Reporting and recordkeeping requirements.

Under the authority of the Mineral Leasing Act (30 U.S.C. 181, *et seq.*), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359), the Multiple Mineral Development Act (30 U.S.C. 521–531), the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201, *et seq.*), and the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701, *et seq.*), Part 3450, Group 3400, Subchapter C, Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below:

J. Steven Griles,

Assistant Secretary of the Interior.

August 25, 1988.

PART 3450—[AMENDED]

1. The authority citation for Part 3450 continues to read:

Authority: 30 U.S.C. 181 *et seq.*; 30 U.S.C. 351–359; 30 U.S.C. 521–531; 30 U.S.C. 1201 *et seq.*; and 43 U.S.C. 1701 *et seq.*

2. Section 3451.1 is amended by revising paragraphs (c)(2) and (e) to read as follows:

§ 3451.1 Readjustment of lease terms.

* * * * *

(c) * * *

(2) In any notification that a lease will be readjusted under this subsection, the authorized officer will prescribe when the decision transmitting the readjusted lease terms will be sent to the lessee. The time for transmitting the information will be as soon as possible after the notice that the lease shall be readjusted, but will not be longer than 2 years after such notice. Failure to send the decision transmitting the readjusted lease terms in the specified period shall constitute a waiver of the right to readjust, unless the delay is caused by events beyond the control of the Department.

* * * * *

(e) The Governor of the affected State will be sent a copy of the readjusted lease terms.

3. Section 3451.2(a), (b), (c), and (e) are revised to read:

§ 3451.2 Notification of readjusted lease terms.

(a) If the notification that the lease will be readjusted did not contain the readjusted lease terms, the authorized officer will, within the time specified in the notice that the lease shall be readjusted, notify the lessee by decision of the readjusted lease terms.

(b) The decision transmitting the readjusted lease terms and conditions to the lessee(s) of record shall constitute the final action of the Bureau of Land Management on all the provisions contained in a readjusted lease and will be provided to the lessee(s) of record prior to the anniversary date. The effective date of the readjusted lease shall not be affected by the filing of any appeal of, or a civil suit regarding, any of the readjusted terms and conditions.

(c) The readjusted lease terms and conditions shall become effective on the anniversary date;

(e) Regardless of whether an appeal is filed by the lessee(s), all of the readjusted lease terms and conditions, including, but not limited to, the reporting and payment of rental and royalty, shall be effective on the anniversary date.

[FR Doc. 88–21883 Filed 9–23–88; 8:45 am]

BILLING CODE 4310–84–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6809]

Suspension of Community Eligibility; Flood Insurance; Illinois, et al.

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If FEMA receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the Federal Register.

EFFECTIVE DATES: The third date ("Susp.") listed in the fourth column.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646–2717, Federal Center Plaza, 500 C Street, Southwest, Room 416, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022), prohibits flood insurance

10. On page 29019, in the second column, in the first complete paragraph, in the ninth line, "appeals" should read "appeal".

§ 404.1597 [Corrected]

11. On page 29020, in the second column, in § 404.1597(b), in the second line, "determination," should read "determination),".

§ 404.1597a [Corrected]

12. On page 29021, in the first column, in § 404.1597a(d), in the 14th line, "if" should read "If".

13. On the same page, in the third column, in § 404.1597a(i) introductory text, in the first line, "*when you*" should read "*when your*".

14. On page 29022, in the first column, in § 404.1597a(i) introductory text, in the second line, "you" should read "your".

15. On the same page, in the same column, in § 404.1597a(i)(2), in the 21st line, "benefits" should read "benefit"; and in the 28th line, "witten" should read "written".

16. On the same page, in the third column, in § 404.1597a(i)(6), in the 14th line, "judge" was misspelled.

§ 416.996 [Corrected]

17. On page 29024, in the second column, in § 416.996(e)(1), in the fifth line, "whould" should read "should".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3450

[AA-660-08-4121-02; Circular No. 2611]

Management of Existing Leases; Continuation of Leases—Readjustment of Terms

Correction

In rule document 88-21883 beginning on page 37296 in the issue of Monday, September 26, 1988 make the following correction:

On page 37296, in the third column under **SUMMARY**, in the fourth line "leases"should read "lessees".

BILLING CODE 1505-01-D

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

22 CFR Part 204

Housing Guaranty Standard Terms and Conditions

Correction

In rule document 88-19861 beginning on page 33805 in the issue of Thursday, September 1, 1988, make the following correction:

§ 204.1 [Corrected]

On page 33805, in the third column, § 204.1(i)(1) should read "Outstanding Investment determined as of the Date of Application,".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[T.D. 8226]

Consolidated Return Regulations—Adjustments Reflecting a Restructuring of a Consolidated Group

Correction

In rule document 88-20394 beginning on page 34729 in the issue of Thursday, September 8, 1988, make the following corrections:

1. The CFR title and parts affected should read as set forth above.

2. On page 34731, in the first column, in the fourth complete paragraph, in the 12th line, after "profits" insert "that are not reflected in the earnings and profits".

§ 1.1503-31T [Corrected]

3. On page 34732, in the third column, in § 1.1503-31T(a)(3)(vii), in the second line "illustrate" should read "illustrates".

BILLING CODE 1505-01-D

a former spouse is based in part on an annuity supplement payable to a principal under 5 U.S.C. 8421 which is not adjusted by COLA, then that portion of the benefit payable to a former spouse is not adjusted by COLA.

(b) *Survivor Benefits.* (1) Survivor annuities payable to a former spouse are adjusted for COLA under section 826 or 858 of the Act in the same manner as annuities are or would be adjusted for other survivors of the principal.

(2) A survivor annuity payable to a former spouse under § 20.5–1(A) shall be increased from its commencing date pursuant to paragraph (c)(2) of section 826 of the Act or 8462 of Title 5, U.S. Code, by all COLA received by the principal at death, irrespective of the date of death and in instances where death occurred prior to December 22, 1987, by all COLA that would have been paid to a survivor annuitant from the date of death until December 22, 1987.

(3) The first increase to which a former spouse becomes entitled whose annuity is computed under § 20.5(a)(2) shall be prorated pursuant to 5 U.S.C. 8462(c)(4).

(4) The first increase to which a former spouse becomes entitled whose annuity is computed under § 20.5(a)(3) or

(5) Shall be prorated pursuant to paragraph (c)(1) of section 826 of the Act or 8462 or Title 5, U.S. Code.

§ 20.7 Waiver.

A former spouse entitled to an annuity under this part may decide to decline all or any part of the annuity for personal reasons. An annuity waiver shall be in writing and sent to the Retirement Division (PER/ER/RET), Department of State, Washington, DC 20520. A waiver may be revoked in writing at any time. Payment of the annuity waived prior to receipt by the Retirement Division of the renovation may not be made.

§ 20.8 Effect on other benefits.

Payment to a former spouse under this part shall not impair, reduce, or otherwise affect benefits paid under the Act to the principal or other persons.

§ 20.9 Application procedure.

(a) *Submission of Application.* To be eligible for retirement or survivor benefits under this part, a former spouse must submit a properly executed and completed application to the Department of State by June 22, 1990 or, if an exception is made for compelling cause to this deadline, within 60 days following the date of the letter from the Department transmitting the application to the former spouse. The application must be delivered or mailed to the Retirement Division (PER/ER/RET), Room 1251, Department of State, Washington, DC 20520.

(b) *Request for Application.* The Department of State has attempted to mail applications to all former spouses of whom it is aware that it believes may be eligible for benefits under this part. Any eligible former spouse who does not have an application at the time this part is published in the Federal Register (October 7, 1988) must communicate with the Department as soon as possible and request an application. Request may be in person or by mail to the address in § 20.9(a) or by telephoning the Retirement Division on area code 202–647–9315. A request by letter must include the typed or printed full name and current address of the former spouse.

It shall also give the dates of marriage and divorce or annulment that establish eligibility and fully identify the Foreign Service employee or former employee in question and state the agency of current or last employment.

(c) *Payment of Benefits Delayed.* Payment of benefits cannot be made to a former spouse until the application for benefits is approved by the Retirement Division of the Department. Upon such approval, benefits will be paid to an eligible former spouse retroactively, if necessary, back to the commencing date determined under this part.

July 19, 1988.

George S. Vest,

Director General of the Foreign Service and Director of Personnel.

[FR Doc. 88–23142 Filed 10–6–88; 8:45 am]

BILLING CODE 4710–15–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Minerals Management Service

30 CFR Part 206

43 CFR Part 3590

[AA–660–88–4133–02; Circular No. 2612]

Product Valuation; and Solid Minerals (Other Than Coal) Exploration and Mining Operations; Streamlining Amendments

AGENCY: Bureau of Land Management, Interior, and Minerals Management Service, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking amends the provisions of 43 CFR Part 3590 concerning solid minerals exploration and mining operations to streamline and clarify the existing regulations. The final rulemaking also eliminates duplication of regulations which are currently under the authority of the Minerals Management Service, and transfers a section dealing with product valuation to the title of the Code of Federal Regulations containing MMS regulations.

EFFECTIVE DATE: November 7, 1988.

ADDRESS: Any suggestions or inquiries should be sent to: Director (660), Bureau of Land Management, Room 3511, Main Interior Bldg., 1800 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: W. Vance Greer or Paul Politzer, (202) 343–7722.

SUPPLEMENTARY INFORMATION: A proposed rulemaking containing the revisions of 43 CFR Part 3590 was published in the Federal Register on January 26, 1988 (53 FR 2055) with a 60 day comment period. During the comment period comments were received from 6 sources, 4 from mining companies, 1 from a law firm and 1 from an individual. All the comments were given careful consideration and will be addressed in the preamble under the specific section relating to the comment.

The title of Group 3500 was revised to read, "Management of Solid Minerals Other Than Coal". The removal of the exclusion of oil shale from this title is done in order to allow existing oil shale leases to be governed by Part 3590 of Group 3500, even though oil shale cannot be leased under Part 3500.

Section 3590.0–5 Definitions.

Three comments were received on this section. One comment suggested that the terms "Service" and "Authorized Officer" be defined in this section. The comment was rejected because both terms have been defined at 43 CFR 3500.0–5 and were not defined in this Part to avoid repetition. However, the term "Service", where used in the text, has been changed to "Minerals Management Service" (MMS) in the final rulemaking to avoid possible confusion. Two comments were received regarding the definition of "Ultimate Maximum Recovery". Both comments wanted economic factors to be incorporated into the definition and the determination of ultimate maximum recovery. One comment also suggested that the definition was too general and should include qualifiers to allow for geologic conditions and mining methods. The same comment objected to the use of the term "standard industry operating practices" because the same practice may result in different recovery rates

depending on several variable factors. The comments were rejected because this rulemaking must retain a certain amount of flexibility in order to cover a wide variety of commodities and mining conditions. Geologic conditions, mining methods, economic factors and other variables affecting ultimate maximum recovery are to be addressed during the mine plan approval process. This procedure will retain the concept of ultimate maximum recovery, which is to avoid high grading and the loss of recoverable reserves, and will allow the operator and the authorized officer to consider any local factors.

Section 3590.1 Confidentiality of information.

One comment was received on this section. The comment was concerned that the rules no longer specifically stated that "commercial and financial information would be kept confidential" and also wanted a statement in the final rules which would protect information previously submitted if not stamped "confidential information" as required by the final rules. The comment was accepted in part. The final rules contain a statement that information previously submitted will be made public only in accordance with the Freedom of Information Act (FOIA). FOIA contains specific provisions regarding what will be held confidential, including the commercial and financial information of concern to the author of the comment. After careful consideration it was decided not to repeat the provisions of FOIA in the final rules, because the Department has regulations in 43 CFR Part 2 that ensure that information is released to the public only in accordance with FOIA.

Section 3590.2 Responsibility of the authorized officer.

Two comments were received on this section. One comment preferred "frequent inspections" in paragraph (a) to the proposed terminology which requires inspections to be conducted "at least quarterly", because it allowed more flexibility in scheduling inspections. The comment was rejected because the provision for quarterly inspections is a minimum and does not restrict the authorized officer if more inspections are needed to ensure compliance. Flexibility is not diminished because inspections may be scheduled any time during the quarter. One comment stated that paragraph (c), relating to air and water quality, was "a duplication of regulatory efforts by State and Federal environmental agencies" and suggested that the section be removed or qualified to reflect the Bureau's role as one of coordination with State and Federal agencies having jurisdiction over air and water quality issues. In response to this comment the final rules in this subpart were revised to clarify BLM's role. The subsection was not removed, in order to ensure regulatory authority for the Bureau to monitor air and water provisions of NEPA and to enforce those requirements in the absence of other State and Federal agencies. The subsection was revised to require coordination with appropriate State and Federal agencies. Paragraph (d), also relating to air and water monitoring, was removed in response to this comment. Paragraph (h) was revised as a result of internal review to clarify that BLM is the agency having administrative jurisdiction over cases of mineral trespass.

Section 3592.1 Operating plans.

Four comments were received on this section. One comment suggested that subsection (a) be amended to specify "that a new operating plan is not needed every time a new lease is mined" in cases where a single operation may contain more than one lease. The final rulemaking is amended in response to this comment to make it clear that an operation plan may include more than one permit or lease. One comment on paragraph (c) opposed the "minimum" requirements of the mine plan and suggested that this section be reworded to read "my or all of the following". This part of the comment was rejected because these are the minimum requirements and issues required by law and policy to be addressed before a mine plan can be approved. The comment also questioned the requirement that certain environmental data be submitted when there would be no surface disturbance on public lands. The final rulemaking is amended to show that these requirements apply only to Federal and Indian leases, licenses, and permits. The Bureau recognizes that different commodities and mining periods are involved and that there may be cases where some particular requirement may not apply. If this is the case the requirement must still be addressed by explaining why it is not applicable.

Two comments questioned the practicality and need for the amount of detail required in the mine plan submission, specifically citing the diffficulty in trying to forecast ultimate maximum recovery. One comment stated that it was unrealistic to "force the operator to adhere to narrow forecasted mining sequences, tonnage and grade requirements". The comments were rejected because the information required is necessary for the Bureau to make determinations regarding conservation of the resource and to ensure that the public interests are served. Mine plan modifications are to be used to correct those segments of a mine plan where new information indicates that the best estimate at time of plan approval was incorrect.

One comment suggested that the plan modification requirements were unrealistic because plans sometimes change frequently and it was impractical to wait for BLM approval. Modifications are intended to reflect changes and/or oversights that could have a major impact on resource recovery, environmental concerns, or protection of other resources on the lease. It is not intended to monitor normal production scheduling or the frequent movement of equipment. If a modification is necessary and time is a factor, verbal approval of the modification may be given by the authorized officer and the documentation submitted later.

All comments received on the reduction in the number of mine plan copies to be submitted from 5 copies to 2 copies were favorable. However, internal review indicated that 2 copies were inadequate when the surface management agency was other than the BLM. The final rulemaking is amended to require 3 copies when this is the case. Paragraph (c)(3) was also amended to clarify that each copy of the plan needs to be accompanied by only one copy of the map or aerial photograph required by this section.

Section 3594.1 Ultimate maximum recovery.

Two comments were received on this section. One comment stated that paragraph (a) was vague and indicated that the requirement relating to protection of other resources required "procognitive ability". The comment was rejected because the concept of ultimate maximum recovery, as stated in the regulations and discussed in this preamble under § 3590.0–5, is clearly stated. Mining operations are expected to achieve maximum recovery of the reserves giving due consideration to environmental concerns, mining conditions and other factors which may affect such recovery. If other resources are contained within the area to be mined, the BLM is required to consider the potential loss of those resources during the mine plan approval process. It is not considered procognitive to study the information available and make a determination regarding what measures, if any, should be taken to

protect other resources. One comment stated that information required in paragraph (b) was covered in § 3593.1 relating to submission of geologic and geophysical data. The final rulemaking is revised to clarify that this requirement pertains to new or different information discovered during the course of mining.

Section 3594.5 Minerals soluble in water; brines; minerals taken in solution.

One comment was received on this section. The comment suggested that this section be reorganized for clarity and the last part revised to specify conditions where mineral solutions could be taken within 500 feet of the lease boundary. The final rulemaking is revised in response to this comment by dividing the section into 3 subsections and amending the language to show that brines may be taken within 500 feet of the lease boundary if approval is granted by the authorized officer.

A new paragraph (d) was added to clarify that procedures used to allocate brine production from a combination of Federal and non-Federal lands would be addressed in the mine plan.

Section 3595.1 Surface openings.

At the request of a comment, a new paragraph (c) has been added to this section to clarify the requirements for the abandonment of wells used in solution mining or brine extraction.

Section 3596.1 Milling.

One comment was received on this section, suggesting that the term "approved practices" should be reinstated and the phrase "established requirements" deleted. The comment was accepted because the term more accurately expresses the intended meaning and the final rulemaking is amended accordingly.

Section 3597.1 Books of account.

One comment was received on this section opposing the provisions permitting BLM to request and receive any production data not submitted to MMS. The most apparent concern was the amount of confidential data associated with royalty reporting to MMS. The final rulemaking is amended in paragraph (b) to read "production reporting" instead of "royalty reporting", to provide that only production data and not royalty data may be required by BLM, because MMS is responsible for royalty accounting. The Bureau retains authority to request and receive production data if there is a demonstrated need to verify production and the information needed is not being submitted to MMS.

Section 3597.2 Value basis for royalty computation.

One comment was received on this section suggesting that BLM retain this authority because the "rule should not be left open to unclear future rulings or arbitrary changes by the MMS". The comment was rejected because this authority has been delegated by the Secretary to MMS. To make this clear, this section has been redesignated without amendment in this final rulemaking as 30 CFR 206.301, in the regulations of the Minerals Management Service.

The principal author of this final rulemaking is W. Vance Greer of the Division of Solid Mineral Operations, Bureau of Land Management, assisted by the staff of the Division of Legislation and Regulatory Management.

It is hereby determined that this final rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

The information collection requirement(s) contained in this final rulemaking have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1004–0142.

List of Subjects in 30 CFR Part 206

Continental shelf, Geothermal energy, Government contracts, Mineral royalties, Oil and gas exploration, Public lands—mineral resources.

List of Subjects in 43 CFR Part 3590

Administrative practice and procedure, Indian lands—mineral resources, Mineral royalties, Mines, Public lands—mineral resources, Reporting and recordkeeping requirements.

Under the authorities cited below, Part 206 of Title 30 of the Code of Federal Regulations and Part 3590, Group 3500, Subchapter C, Chapter II of Title 43 of the Code of Federal Regulations are amended as set forth below:

J. Steven Griles,

Assistant Secretary of the Interior.

September 30, 1988.

1. The authority citation for 30 CFR Part 206 continues to read as follows:

Authority: 25 U.S.C. 396 *et seq.*; 25 U.S.C. 396a *et seq.*; 25 U.S.C. 2101 *et seq.*; 30 U.S.C. 181 *et seq.*; 30 U.S.C. 351 *et seq.*; 30 U.S.C. 1001 *et seq.*; 30 U.S.C. 1701 *et seq.*; 43 U.S.C. 1301 *et seq.*; 43 U.S.C. 1331 *et seq.*; 43 U.S.C. 1801 *et seq.*

PART 206—[AMENDED]

§ 206.301 [Redesignated from 3597.2]

§ 3597.2 Redesignated as § 206.301

2. Section 3597.2 is redesignated as 30 CFR 206.301.

3. The title of Group 3500 is revised to read:

Group 3500—Management of Solid Minerals Other Than Coal

4. Part 3590 is revised to read:

PART 3590—SOLID MINERALS (OTHER THAN COAL) EXPLORATION AND MINING OPERATIONS

Note: There are many leases and agreements currently in effect, and which will remain in effect, involving Federal leases which specifically refer to the United States Geological Survey, Minerals Management Services or the Conservation Division. These leases and agreements also often specifically refer to various officers as Supervisor, Conservation Manager, Deputy Conservation Manager, Minerals Manager and Deputy Minerals Manager. In addition, many leases and agreements specifically refer to 30 CFR Part 231 or specific sections thereof. Those references shall now mean the Bureau of Land Management or Minerals Management Service, as appropriate.

Subpart 3590—Solid Minerals (Other than Coal) Exploration and Mining Operations—General

Sec.

3590.0–1 Purpose.
3590.0–2 Policy.
3590.0–3 Authority.
3590.0–5 Definitions.
3590.0–7 Scope.
3590.1 Confidentiality of information.
3590.2 Responsibility of the authorized officer.

Subpart 3591—General Obligations of Lessees, Licensees and Permittees

3591.1 General obligations of lessees, licenses and permittees.
3591.2 Forms and reports.

Subpart 3592—Plans and Maps

3592.1 Operating plans.
3592.2 Maps of underground workings and surface operations.
3592.3 Production Maps.

Subpart 3593—Bore Holes and Samples

3593.1 Core or test hole, cores, samples, cuttings.

Subpart 3594—Mining Methods

3594.1 Ultimate maximum recovery.
3594.2 Support pillars.
3594.3 Boundary pillars and isolated blocks.
3594.4 Development on leased lands through adjoining mines as part of a mining unit.
3594.5 Minerals soluble in water; brines; minerals taken in solution.

Subpart 3595—Protection Against Mining Hazards

3595.1 Surface openings.
3595.2 Abandonment of underground workings.

Subpart 3596—Waste From Mining or Milling

3596.1 Milling.
3596.2 Disposal of waste.

Subpart 3597—Production Records

3597.1 Books of account.
3597.2 Audits.

Subpart 3598—Inspection and Enforcement

3598.1 Inspection of underground and surface conditions; surveying, estimating and study.
3598.2 Issuance of orders.
3598.3 Service of notices, instructions and orders.
3598.4 Enforcement orders.
3598.5 Appeals.

Authority: The Mineral Leasing Act as amended and supplemented (30 U.S.C. 181 *et seq.*); the Mineral Leasing Act for Acquired Lands, as amended (30 U.S.C. 351–359); the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4331 *et seq.*); the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*); Reorganization Plan No. 3 of 1946 (5 U.S.C. Appendix); sec. 3 of the Act of September 1, 1949 (30 U.S.C. 192c); the Act of June 30, 1950 (16 U.S.C. 508(b)); the Act of June 8, 1926 (30 U.S.C. 291–293); the Act of March 3, 1933, as amended (47 Stat. 1487); sec. 10 of the Act of August 4, 1939 (43 U.S.C. 387); the Act of October 8, 1964 (16 U.S.C. 460n *et seq.*); the Act of November 8, 1965 (16 U.S.C. 90c *et seq.*); the Act of October 27, 1972 (16 U.S.C. 460dd *et seq.*); the Alaska National Interest Lands Conservation Act (16 U.S.C. 460mm-2-460mm-4); the Independent Offices Appropriation Act (31 U.S.C. 9701); the Combined Hydrocarbon Leasing Act of 1981 (95 Stat. 1070); the Act of May 27, 1908 (35 Stat. 315); the Act of March 3, 1981 (95 Stat. 1070); the Act of May 27, 1908 (35 Stat. 315); the Act of March 3, 1909, as amended (25 U.S.C. 396); the Act of May 11, 1938, as amended (25 U.S.C. 396a-396q); the Indian Mineral Development Act of 1982 (25 U.S.C. 2101 *et seq.*).

Subpart 3590—Solid Minerals (Other Than Coal) Exploration and Mining Operations—General

§ 3590.0–1 Purpose.

The purpose of the regulations in this part is to promote orderly and efficient prospecting, exploration, testing, development, mining and processing operations and production practices without waste or avoidable loss of minerals or damage to deposits; to encourage maximum recovery and use of all known mineral resources; to promote operating practices which will avoid, minimize or correct damage to the environment—land, water and air—and avoid, minimize or correct hazards to public health and safety; and to obtain a proper record and accounting of all minerals produced.

§ 3590.0–2 Policy.

The regulations in this part are administered under the direction of the Director, Bureau of Land Management.

§ 3590.0–3 Authority.

Authority for carrying out the regulations in this part is set out in § 3500.0–3 of this title, unless otherwise noted.

§ 3590.0–5 Definitions.

As used in this part, the term: (a) "Established requirements" means applicable law and regulations, lease, license or permit terms, conditions and special stipulations; approved mine or exploration plan requirements; and orders issued by the authorized officer.

(b) "General mining order" means a formal numbered order issued in a rulemaking procedure by the Department of the Interior which implements the regulations in this part and applied to mining and related operations.

(c) "Lessee" means any person, partnership, association, corporation or municipality that holds a mineral lease, through issuance or assignment, in whole or part, which lease is subject to the provisions of this part.

(d) "Licensee" means any person, partnership, association, corporation or municipality that holds a mineral license, through issuance or assignment, in whole or part, which license is subject to the provisions of this part.

(e) "Permittee" means any person, partnership, association, corporation or municipality that holds a mineral prospecting permit, through issuance, or assignment, in whole or part, which permit is subject to the provisions of this part.

(f) "Operator" means anyone authorized to conduct operations pursuant to the regulations in this part.

(g) "Reclamation" means the measures undertaken to bring about the necessary reconditioning or restoration of lands or water affected by exploration, mining, on-site processing operations or waste disposal in a manner which, among other things, will prevent or control on-site or offsite damage to the environment.

(h) "Ultimate maximum recovery" means that all portions of a leased Federal mineral deposit shall be mined, based on standard industry operating practices. The requirement to achieve ultimate maximum recovery does not in any way restrict the authorized officer's authority to ensure the conservative of the mineral resource and protection of the other resources.

§ 3590.0–7 Scope.

The regulations in this Part govern operations for the discovery, testing, development, mining, reclamation, and processing of all minerals under lease, license or permit issued for Federal lands under the regulations in Group 3500 of this title or Part 3140 of this title. For operations, involving the extraction of hydrocarbon from tar sands or oil shale by in-situ methods utilizing boreholes or wells, Part 3160 of this title is applicable. These regulations also govern operations for all minerals on Indian tribal lands and allotted Indian lands leased under 25 CFR Parts 211 and 212. Further, when the regulations in this part related to matters included in 25 CFR Part 215 or 216 the regulations in this Part shall be considered as supplemental and the regulations in 25 CFR Part 215 or 216 shall govern to the extent of any inconsistencies.

§ 3590.1 Confidentiality of information.

(a) Information obtained under this Part and on file shall be open for public inspection and copying during regular office hours, pursuant to the provisions of the Freedom of Information Act (5 U.S.C. 522(b)) and Part 2 of this title. Upon termination of a lease, license, or permit, whether by expirations of its terms or otherwise, such information shall become available to the public.

(b) Information requested to be kept confidential under this section shall be clearly identified by the lessee, licensee or permittee by marking each page of documents submitted with the words "Confidential Information" at the top of the page. All pages so marked shall be in a separate volume(s) from other portions of the submitted materials. All information not marked, "Confidential Information" shall be available for public inspection, except that information previously submitted and not marked will be available for public inspection, only in accordance with the Freedom of Information Act.

(c) Confidential and privileged information obtained from a lessee under this part on any Indian lease shall be available only to the Tribe or allotted

Indian lessor, their designated agent or authorized Department of the Interior officials. Such information shall not be made available to any other party without the express authorization of the Tribe or allotted Indian lessor.

§ 3590.2 Responsibility of the authorized officer.

The authorized officer shall regulate prospecting, exploration, testing, development, mining, processing operations, and reclamation authorized under this part. The duties of the authorized officer include, but are not limited to, the following:

(a) Approval of operating plans and plan modifications after preparation of appropriate environmental analyses. Prior to approving a plan, the authorized officer shall consult with the agency having jurisdiction over the lands with respect to the surface protection and reclamation aspects of such plan.

(b) Inspection, at least quarterly, of leased, licensed or permitted lands where operations for discovery, testing, development, mining, reclamation, or processing of minerals are being conducted.

(c) Inspection and regulation of such operations for the purpose of preventing waste of mineral substances or damage to formations and deposits containing them, or damage to other formations, deposits or nonmineral resources affected by the operations.

(d) Inspecting exploration and mining operations to determine the adequacy of water management and pollution control measures taken for the protection of the quality of surface and groundwater resources and the adequacy of emission control measures taken for the protection of air quality. Such inspection shall be conducted as necessary and shall be fully coordinated with all State and Federal agencies having jurisdiction.

(e) Requiring operators to conduct operations in compliance with established requirements, including the law, regulations, the terms and conditions of the lease, license or permit, the requirements of approved exploration or mining plans, notices and orders and special stipulations.

(f) Obtaining the records of production of minerals and other information as necessary in order to verify that production reported to the Minerals Management Service for royalty purposes is an accurate accounting of minerals produced.

(g) Acting on applications for suspension of operations and production filed under § 3503.3 of this title and terminating such suspensions when conditions warrant. The authorized officer shall, upon request, assist in review of applications for suspension of operations and production on Indian lands which are filed under the provisions of 25 CFR Parts 211 and 212.

(h) Upon receipt of a written request for cessation or abandonment of operations, inspecting the operations and determining whether they are in compliance with established requirements. The authorized officer shall, in accordance with applicable procedures, consult with, or obtain the concurrence of the State or Federal agency having jurisdiction over the lands with respect to the surface protection and reclamation requirements of the lease, license or permit and the exploration or mining plan.

(i) Acting on any mineral trespass on Federal or Indian lands in accordance with Part 9230 of this title. The surface managing agency, if other than the BLM, shall be notified of any mineral trespass and the planned enforcement action.

(j) Implementing General Mining Orders and issuing other orders, making determinations and providing concurrence and approvals as necessary to implement or assure compliance with the regulations in this part. Any verbal orders, approvals or concurrences shall be promptly confirmed in writing.

Subpart 3591—General Obligations of Lessees, Licensees and Permittees

§ 3591.1 General obligations of lessees, licensees and permittees.

(a) Operations for the discovery, testing, development, mining or processing of minerals shall conform to the established requirements.

(b) The surface of lease, license or permit lands shall be reclaimed in accordance with established requirements. Lessees, licensees or permittees shall take such action as may be needed to avoid, minimize or repair:

(1) Waste and damage to mineral-bearing formations;

(2) Soil erosion;

(3) Pollution of the air;

(4) Pollution of surface or ground water;

(5) Damage to vegetation;

(6) Injury to or destruction of fish or wildlife and their habitat;

(7) Creation of unsafe or hazardous conditions;

(8) Damage to improvements; and

(9) Damage to recreation, scenic, historical and ecological values of the lands.

(10) Damage to scientifically significant paleontological and archaeological resources.

(c) All operations conducted under this part shall be consistent with Federal and State water and air quality standards.

(d) Inundations, fires, fatal accidents, accidents threatening damage to the mine, the lands or the deposits, or conditions which could cause water pollution shall be reported promptly to the authorized officer. The notice required by this section shall be in addition to any notice or reports required by 30 CFR Part 56 or 57, or other applicable regulations.

§ 3591.2 Forms and reports.

The operator shall submit production and royalty forms and reports to the Minerals Management Service in accordance with 30 CFR Parts 216 and 218.

Subpart 3592—Plans and Maps

§ 3592.1 Operating plans.

(a) Before conducting any operations under any lease(s), license(s), or permit(s), the operator shall submit to the authorized officer an exploration or mining plan which shall show in detail the proposed exploration, prospecting, testing, development or mining operations to be conducted. Exploration and mining plans shall be consistent with and responsive to the requirements of the lease, license or permit for the protection of nonmineral resources and for the reclamation of the surface of the lands affected by the operations on Federal or Indian lease(s), license(s), or permits. The authorized officer shall consult with any other agency involved, and shall promptly approve the plans or indicate what additional information is necessary to conform to the provisions of the established requirements. No operations shall be conducted except as provided in an approved plan.

(b) The exploration plan shall be submitted in accordance with mineral specific regulations in Group 3500 of this title (See Subparts 3512, 3522, 3532, 3542, 3552 and 3562) and in accordance with 25 CFR 216.6 for Indian lands.

(c) The lessee/operator shall submit 2 copies of the mining plan to the authorized officer for approval. An additional copy shall be submitted if the surface managing agency is other than the BLM. The mining plan shall contain, at a minimum, the following:

(1) Names, addresses and telephone numbers of those responsible for operations to be conducted under the approved plan to whom notices and orders are to be delivered, names and addresses of lessees, Federal lease serial numbers and names and addresses of surface and mineral owners of record, if other than the United States;

(2) A general description of geologic conditions and mineral resources, with appropriate maps, within the area where mining is to be conducted;

(3) A copy of a suitable map or aerial photograph showing the topography, the area covered by the lease(s), the name and location of major topographic and cultural features and the drainage plan away from the affected area;

(4) A statement of proposed methods, of operating, including a description of the surface or underground mining methods, the proposed roads, the size and location of structures and facilities to be built, mining sequence, production rate, estimated recovery factors, stripping ratios and number of acres in the Federal or Indian lease(s), license(s), or permit(s) to be affected;

(5) An estimate of the quantity and quality of the mineral resources, proposed cutoff grade and, if applicable, proposed blending procedures for all leases covered by the mining plan;

(6) An explanation of how ultimate maximum recovery of the resource will be achieved for the Federal or Indian lease(s). If a mineral deposit, or portion thereof, is not to be mined or is to be considered unminable by the operation, the operator/lessee shall submit appropriate justification to the authorized officer for approval;

(7) Appropriate maps and cross sections showing:

(i) Federal or Indian lease boundaries and serial numbers;

(ii) Surface ownership and boundaries;

(iii) Locations of existing and abandoned mines;

(iv) Typical structure cross sections;

(v) Location of shafts or mining entries, strip pits, waste dumps, and surface facilities; and

(vi) Typical mining sequence, with appropriate timeframes;

(8) A narrative which addresses the environmental aspects associated with the proposed mine which includes, at a minimum, the following:

(i) An estimate of the quantity of water to be used and pollutants that may enter any receiving waters;

(ii) A design for the necessary impoundment, treatment or control of all runoff water and drainage from workings to reduce soil erosion and sedimentation and to prevent the pollution of receiving waters;

(iii) A description of measures to be taken to prevent or control fire, soil erosion, subsidence, pollution of surface and ground water, pollution of air, damage to fish or wildlife or other natural resources and hazards to public health and safety; and

(9) A reclamation schedule and the measures to be taken for surface reclamation of the Federal or Indian lease(s). license(s), or permit(s) that will ensure compliance with the established requirements. In those instances in which the lease requires the revegetation of an area affected by operations, the mining plan shall show:

(i) Proposed methods of preparation and fertilizing the soil prior to replanting;

(ii) Types and mixtures of shrubs, trees or tree seedlings, grasses or legumes to be planted; and

(iii) Types and methods of planting, including the amount of grasses or legumes per acre, or the number and spacing of trees or tree seedlings, or combinations of grasses and trees;

(10) The method of abandonment of operations on Federal or Indian lease(s), license(s), and permit(s) proposed to protect the unmined recoverable reserves and other resources, inlcuding the method proposed to fill in, fence or close all surface openings which are a hazard to people or animals. Abandonment of operations also is subject to the provisions of Subpart 3595 of this title; and

(11) Any additional information that the authorized officer deems necessary for approval of the plan.

(d)(1) Approved exploration and mining plans may be modified at any time to adjust to changed conditions or to correct an oversight. To obtain approval of an exploration or mining plan modification, the operator/lessee shall submit a written statement of the proposed modification and the justification for such modification. Any proposed exploration or mining plan modification(s) shall not be implemented unless previously approved by the authorized officer.

(2) The authorized officer may require a modification to the approved exploration or mining plan if conditions warrant.

(e) If circumstances warrant, or if development of an exploration or mining plan for the entire operation is dependent upon unknown factors which cannot or will not be determined except during the progress of the operations, a partial plan may be approved and supplemented from time to time. The operator/lessee shall not, however, perform any operation except under an approved plan.

§ 3592.2 Maps of underground workings and surface operations.

Maps of underground workings and surface operations shall be drawn to a scale acceptable to the authorized officer. All maps shall be appropriately marked with reference to Government land marks or lines and elevations with reference to sea level. When required by the authorized officer, vertical projections and cross sections shall accompany plan views. Maps shall be based on accurate surveys and certified by a professional engineer, professional land surveyor or other professionally qualified person. Accurate copies of such maps or reproductive material or prints thereof shall be furnished by the operator to the authorized officer when and as required.

§ 3592.3 Production maps.

(a) The operator shall prepare maps which show mineral production from the leased lands. All excavations in each separate bed or deposit shall be shown in such a manner that the production of minerals for any royalty period can be accurately ascertained. Maps submitted for in situ or solution mining shall show pipelines, meter locations, or other points of measurement necessary for production verification. Production maps shall be submitted to the authorized officer at the end of each royalty reporting period or on a schedule determined by the authorized officer. As appropriate or required by the authorized officer, production maps also shall show surface boundaries, lease boundaries and topography, including subsidence resulting from mining activities.

(b) In the event of failure of the operator to furnish the maps required by this section, the authorized officer shall employ a licensed mine surveyor to make a survey and maps of the mine, and the cost thereof shall be charged to and promptly paid by the operator/lessee.

(c) If the authorized officer believes any map submitted by an operator/lessee is incorrect, the authorized officer may cause a survey to be made, and if the survey shows the map submitted by the operator/lessee to be substantially incorrect in whole or in part, the cost of making the survey and preparing the map shall be charged to and promptly paid by the operator/lessee.

Subpart 3593—Bore Holes and Samples

§ 3593.1 Core or test hole cores, samples, cuttings.

(a) The operator/lessee shall submit promptly to the authorized officer a signed copy of records of all core or test holes made on the lands covered by the lease, license or permit. The records shall be in a form that will allow the position and direction of the holes to be

located on a map. The records shall include a log of all strata penetrated and conditions encountered, such as water, gas or unusual conditions. Copies of analyses of all samples shall be transmitted to the authorized officer as soon as obtained or as requested by the authorized officer. The operator/lessee shall furnish the authorized officer a detailed lithologic log of each drill hole and all other in-hole surveys or other logs produced. The core from test holes shall be retained by the operator/lessee for 1 year or such other period as may be directed by the authorized officer, and shall be available for inspection by the authorized officer. The authorized officer may cut such cores and receive samples as appropriate. Upon the request of the authorized officer, the operator/lessee shall furnish samples of strata, drill cuttings and mill products.

(b) Surface drill holes for development or holes for prospecting shall be abandoned to the satisfaction of the authorized officer by cementing and/or casing or by other methods approved in advance by the authorized officer and in a manner to protect the surface and not endanger any present or future underground operation or any deposit of oil, gas, other mineral substances or aquifer.

(c) Logs and analyses of development holes shall not be required unless specifically requested by the authorized officer. Drill holes may be converted to surveillance wells for the purpose of determining the effect of subsequent operations upon the quantity, quality of pressure of ground water or mine gases. Such conversion may be required by the authorized officer or requested by the operator/lessee and approved by the authorized officer. Prior to the termination of the lease, license or permit term, all surveillance wells shall be reclaimed unless the surface owner assumes responsibility for reclamation of such surveillance wells. The transfer of liability for reclamation shall be approved in writing by the authorized officer.

(d) When drilling on lands with potential for encountering high pressure oil, gas or geothermal formations, drilling equipment shall be equipped with blowout control devices acceptable to the authorized officer.

Subpart 3594—Mining Methods

§ 3594.1 Ultimate maximum recovery.

(a) Mining operations shall be conducted in a manner to yield the ultimate maximum recovery of the mineral deposits, consistent with the protection and use of other natural resources and the protection and preservation of the environment—land, water and air. All shafts, main exits and passageways, as well as overlying beds or mineral deposits that at a future date may be of economic importance, shall be protected by adequate pillars in the deposit being worked or by such other means as approved by the authorized officer.

(b) New geologic information obtained during mining regarding any mineral deposits on the lease shall be fully recorded and a copy of the record furnished to the authorized officer, if requested.

§ 3594.2 Support pillars.

Sufficient pillars shall be left during first mining to ensure the ultimate maximum recovery of mineral deposits prior to abandonment. All boundary pillars shall be 50 feet thick unless otherwise specified in writing by the authorized officer. Boundary and other main pillars shall be mined only with the written consent or by order of the authorized officer.

§ 3594.3 Boundary pillars and isolated blocks.

(a) If the ore on adjacent lands subject to the regulations in this part has been worked out beyond any boundary pillar, if the water level beyond the pillar is below the operator's/lessee's adjacent operations, and if no other hazards exist, the operator/lessee shall, on the written order of the authorized officer, mine out and remove all available ore in such boundary pillar, both in the lands covered by the lease and in the adjoining premises, when the authorized officer determines that such ore can be mined without undue hardship to the operator/lessee.

(b) If the mining rights in adjoining premises are privately owned or controlled, an agreement may be made with the owners of such interests for the extraction of the ore in the boundary pillars.

(c) Narrow strips of ore between leased lands and the outcrop on other lands subject to the regulations in this part and small blocks of ore adjacent to leased lands that would otherwise be isolated or lost may be mined under the provisions of paragraphs (a) and (b) of this section.

§ 3594.4 Development on leased lands through adjoining mines as part of a mining unit.

An operator/lessee may mine a leased tract from an adjoining underground mine on lands privately owned or controlled or from adjacent leased lands, under the following conditions:

(a) The only connections between the mine on lands privately owned or controlled and the mine on leased lands shall be the main haulageways, the ventilationways and the escapeways. Substantial concrete frames and fireproof doors that can be closed in an emergency and opened from either side shall be installed in each such connection. Other connections through the boundary pillars shall not be made until both mines are about to be exhausted and abandoned. The authorized officer may waive any of the requirements of this paragraph when it is determined such waiver will not conflict with the regulations in 30 CFR Part 57 and will promote maximum recovery of the ore.

(b) Free access for inspection of said connecting mine on lands privately owned or controlled shall be given at any reasonable time to the authorized officer.

(c) If an operator/lessee is operating on a lease through a mine on lands privately owned or controlled does not maintain the mine access in accordance with the safety regulations, operations on the leased lands may be stopped by order of the authorized officer.

§ 3594.5 Minerals soluble in water; brines; minerals taken in solution.

(a) In mining or prospecting deposits of sodium, potassium or other minerals soluble in water, all wells, shafts, prospecting holes and other openings shall be adequately protected with cement or other suitable materials against the coursing or entrance of water. The operator/lessee shall, when ordered by the authorized officer, backfill with rock or other suitable material to protect the roof from breakage when there is a danger of the entrance of water.

(b) On leased, license or permit lands containing brines, due precaution shall be exercised to prevent the deposit from becoming diluted or contaminated by the mixture of water or valueless solution.

(c) Where minerals are taken from the earth in solution, such extraction shall not be within 500 feet of the boundary line of lands contained in the approved mine plan without the written permission of the authorized officer.

(d) Any agreement necessary for allocation of brine production shall be made a part of the mine plan.

Subpart 3959—Protection Against Mining Hazards

§ 3595.1 Surface openings.

(a) The operator/lessee shall substantially fill in, fence, protect or close all surface openings, subsidence holes, surface excavations or workings which are a hazard to people or animals. Such protective measures shall be maintained in a secure condition during the term of the lease, license or permit. Before abandonment of operations, all openings, including water discharge points, shall be closed to the satisfaction of the authorized officer.

(b) Reclamation or protection of surface areas no longer needed for operations will commence without delay. The authorized officer shall designate such areas where restoration or protective measures, or both shall be taken.

(c) Wells utilized for operations involving solution mining or brine extraction shall be abandoned in accordance with the approved mine plan.

§ 3595.2 Abandonment of underground workings.

No underground workings or part thereof shall be permanently abandoned and rendered inaccessible without the advance, written approval of the authorized officer.

Subpart 3596—Waste From Mining or Milling

§ 3596.1 Milling.

The operator/lessee shall conduct milling operations in accordance with the established requirements. The operator/lessee shall use due diligence in the reduction, concentration or separation of mineral substances by mechanical or chemical processes or other means so that the percentage of salts, concentrates, or other mineral substances recovered and waste generated shall be in accordance with the approved practices.

§ 3596.2 Disposal of waste.

The operator/lessee shall dispose of all wastes resulting from the mining, reduction, concentration or separation of mineral substances in accordance with the terms of the lease, approved mining plan, applicable Federal, State and local law and regulations and the directions of the authorized officer.

Subpart 3597—Production Records

§ 3597.1 Books of account.

(a) Operators/lessees shall maintain records which show a correct account of all ore and rock mined, of all ore put through the processing plant, of all mineral products produced and of all ore and mineral products sold. The records shall show all relevant quality analyses of ore minded, processed or sold and the percentage of the mineral products recovered or lost.

(b) Production records shall be made available for examination by the authorized officer during regular business hours. For the purpose of production verification, the authorized office may request, and the operator/lessee shall submit a copy of any portion of the production records not submitted to the Minerals Management Service as part of the operator's/lessee's production reporting.

§ 3597.2 Audits.

(a) An audit of the operator's/lessee's accounts and books may be made or directed by the Minerals Management Service in accordance with the provisions of Title 30 of the Code of Federal Regulations.

(b) An audit of the operator's/lessee's accounts and production records by the service may be requested by the authorized officer if, during the process of verification of production, it is determined that an irregularity exists between reported production and production calculated by the authorized officer. Such audits shall be requested when the irregularity cannot be resolved between the operator/lessee and the authorized officer.

Subpart 3598—Inspection and Enforcement

§ 3598.1 Inspection of underground and surface conditions; surveying, estimating and study.

Operators/lessees shall provide means at all reasonable hours, either day or night, for the authorized officer to inspect or investigate the underground and surface conditions; to conduct surveys; to estimate the amount of ore or other methods of prospecting, exploration, testing, development, processing and handling; to determine the volumes, types, and composition of wastes generated; to determine the adequacy of measures for minimizing the amount of such wastes and the measures for treatment and disposal of such wastes; to determine reclamation procedures and progress; production records; environmental concerns; and to determine whether the operator/lessee is in compliance with established requirements.

§ 3598.2 Issuance of orders.

Orders and notices issued by the authorized officer shall be mailed by certified mail, return receipt requested, to the operator/lessee at the address furnished in the exploration or mining plan. The operator/lessee shall notify the authorized officer of any change of address or operator/lessee name.

§ 3598.3 Service of notices, instructions and orders.

The operator/lessee shall be considered to have received all notices and orders that are mailed by certified mail and a receipt received by the authorized officer. Verbal orders and notices may be given to officials at the mine but shall be confirmed in writing in accordance with § 3598.2 of this title.

§ 3598.4 Enforcement orders.

(a) If the authorized officer determines that an operator/lessee has failed to comply with established requirements, and such noncompliance does not threaten immediate, serious or irreparable damage to the environment, the mine or deposit being mined, or other valuable mineral deposits or other resources, the authorized officer shall serve a notice of noncompliance upon the operator and lessee by delivery in person or by certified mail, return receipt requested. Failure of the operator/lessee to take action in accordance with the notice of noncompliance shall be grounds for the authorized officer to issue an order to cease operations or initiate legal proceedings to cancel the lease under § 3509.4 of this title, or, for Indian leases, recommend to the Bureau of Indian Affairs that action be taken in accordance with 25 CFR Part 211.

(b) A notice of noncompliance shall specify how the operator/lessee has failed to comply with established requirements, and shall specify the action which shall be taken to correct the noncompliance and the time limits within which such action shall be taken. The operator/lessee shall notify the authorized officer when noncompliance items have been corrected.

(c) If, in the judgment of the authorized officer, the failure to comply with the established requirements threatens immediate, serious or irreparable damage to the environment, the mine or the deposit being mined, or other valuable mineral deposits or other resources, the authorized officer may, either in writing or orally with written confirmation, order the cessation of operations without prior notice.

§ 3598.5 Appeals.

Orders or decisions issued under the regulations in this Part may be appealed as provided in Part 4 of this title. Orders issued under § 3598.4(c) of this title shall

be effective during the pendency of any appeal.

[FR Doc. 88-23154 Filed 10-6-88; 8:45 am]
BILLING CODE 4310-84-M

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 916

Approval of Amendments to the Kansas Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Final rule.

SUMMARY: OSMRE is announcing the approval of program amendments submitted by Kansas as modifications to the State's permanent regulatory program (hereinafter referred to as the Kansas program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendments pertain to definitions, permit application requirements, coal exploration, performance standards, and lands unsuitable for surface mining and were submitted to maintain consistency with the Federal requirements.

EFFECTIVE DATE: October 7, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. William J. Kovacic, Director, Kansas City Field Office, Office of Surface Mining Reclamation and Enforcement, 1103 Grand Avenue, Room 502, Kansas City, Missouri 64106; Telephone: (816) 374-6405.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of the Interior approved the Kansas program on January 21, 1981 (46 FR 5892). Information pertinent to the general background and revisions to the permanent program submission, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Kansas program, can be found in the January 21, 1981 Federal Register (46 FR 5892). Subsequent actions concerning proposed amendments are codified at 30 CFR 916.12, 916.15, and 916.16.

II. Submission of Amendments

On January 26, 1988, (Administrative Record No. KS-407) Kansas proposed to amend its program by revising the Kansas Administrative Regulations (K.A.R.) to incorporate by reference certain Federal regulations set out in 30 CFR Parts 701 through 817 as they existed on July 1, 1987. The regulations revised by this amendment are K.A.R. 47-2-75, Definitions; K.A.R. 47-3-42, Application for Mining Permit; K.A.R. 47-7-2, Coal Exploration; K.A.R. 47-9-1, Performance Standards; K.A.R. 47-10-1, Underground Mining; and K.A.R. 47-12-4, Land Unsuitable for Surface Mining.

Kansas proposed these revisions to satisfy the requirements of 30 CFR 916.16 as codified on May 26, 1987 (52 FR 19502). The revisions also respond to a June 9, 1987, letter (Administrative Record No. KS-395) from OSMRE that required Kansas to amend its program to protect historic properties in accordance with the revised Federal regulations promulgated on February 10, 1987 (52 FR 4244).

The Director announced receipt of the proposed amendments in the March 24, 1988, Federal Register (53 FR 9669) and, in the same notice, opened the public comment period and provided an opportunity for a public hearing on their substantive adequacy. No comments were received by April 25, 1988, the close of the comment period. The public hearing scheduled for April 18, 1988, was not held because no one requested an opportunity to testify.

III. Director's Findings

For the reasons discussed below, the Director finds, in accordance with SMCRA and 30 CFR 732.15 and 732.17, that the amendments submitted by Kansas on January 26, 1988, meet the requirements of SMCRA and 30 CFR Chapter VII as they existed on July 1, 1987. However, the Director will require further changes in the future as a result of Federal regulatory revisions promulgated after July 1, 1987.

1. K.A.R. 47-2-75 Definitions

With certain previously approved exceptions, this amendment incorporates by reference 30 CFR 700.5, 701.5, and 705.5 as they were in effect on July 1, 1987. The amendment thus excludes provisions suspended as of that date, including the definitions of "affected area" to the extent that it categorically excludes all public roads with substantial (more than incidental) public use (51 FR 41952, November 20, 1986), "road" (50 FR 7278, February 21, 1985), and "support facilities" (50 FR 28189, July 10, 1985), all in 30 CFR 701.5.

The Kansas action also removes the definition of "adverse physical impact" and incorporates the revised Federal definition of "previously mined area" at 30 CFR 701.5 (52 FR 17526, May 8, 1987), thus meeting the requirements of 30 CFR 916.16(a)(1).

Since the amendment incorporates the same language as the Federal regulations in effect as of July 1, 1987, the Director finds K.A.R. 47-2-75 as revised to be no less stringent than SMCRA and no less effective than the Federal regulations in effect as of that date.

2. K.A.R. 47-3-42 and 47-10-1 Permit Application Requirements

With certain previously approved exceptions, the amendments to K.A.R. 47-3-42(a) (surface mining) and 47-10-1 (underground mining) incorporate by reference 30 CFR 701.11, 773.12, 773.13, 773.15, 773.19, 778.13, 778.14, 778.15, 778.16, 778.17(a), 778.18, 778.21, 778.22, 779.4, 779.11, 779.12, 779.18, 779.19, 779.20, 779.21, 779.22, 779.24, 779.25, 780.11, 780.12, 780.13, 780.14, 780.15, 780.16, 780.18, 780.21, 780.22, 780.23, 780.25, 780.27, 780.29, 780.31, 780.33, 780.35, 780.37, Part 783, Part 784, 785.13, 785.17, 785.18, 785.20, 785.21, and 785.22 as they were in effect on July 1, 1987. The amendment thus excludes provisions suspended as of that date. Suspended regulations include 30 CFR 701.11(e)(1) and (2) insofar as they may be read to retain the regulatory authority's discretion to grant an exemption from reconstruction of existing structures after making the findings of 30 CFR 773.15 (44 FR 67942, November 27, 1979); certain mapping requirements at 30 CFR 783.25(a)(3), (a)(8), and (a)(9) (45 FR 51548, August 4, 1980); 30 CFR 779.21(a) and 783.21(a) to the extent that they require soil surveys for lands that are not prime farmland (45 FR 51548, August 4, 1980); and 30 CFR 780.21(f) and 784.14(e) insofar as they limit the regulatory authority's ability to require an applicant to address life-of-

the-mine hydrologic impacts in the obable hydrologic consequences HC) determination (51 FR 41961, November 20, 1986).

By incorporating the provisions of the November 20, 1986, suspension notice concerning 30 CFR 780.21(f) and 784.14(e), Kansas has complied with 30 CFR 916.16(a)(2) and (a)(11), which required the State to clarify that it has the authority to require a permit applicant to prepare a PHC determination addressing expected hydrologic consequences over the entire life of the mine, not just the term of the permit. The incorporation by reference of 30 CFR 733.15, 779.12, 780.31, 783.12 and 784.17 also satisfies those requirements of the Director's June 9, 1987, letter concerning permit application requirements and permit findings pertaining to the protection of historic properties.

Since the amendment incorporates language identical to that of the corresponding Federal regulations in effect on July 1, 1987, the Director finds revised K.A.R. 47–3–42(a) and 47–10–1 to be no less effective than the Federal regulations in effect as of that date.

3. K.A.R. 47–7–2 Coal Exploration

With certain previously approved ceptions, the amendment to K.A.R. 47–7–2 incorporates by reference 30 CFR 772.11, 772.12, 772.13, 772.14, and 772.15 as they were in effect on July 1, 1987. The amendment thus excludes provisions suspended as of that date. Suspended provisions include the phrase "during which 250 tons or less of coal will be removed and which will substantially disturb the natural land surface" in 30 CFR 772.11(a), and the notice and application content requirements of 30 CFR 772.11(b)(3) and 772.12(b)(3) to the extent that they do not require submission of a narrative description of the exploration area (51 FR 41961, November 20, 1986).

By excluding these suspended provisions, Kansas has satisfied 30 CFR 916.16(a)(3), which required the State to amend its program to require that (1) all persons planning to conduct coal exploration submit a notice of intent regardless of whether the exploration activity would substantially disturb the natural land surface, and (2) all notices of intent and applications for coal exploration include a narrative describing the exploration area.

Also, by incorporating the February 10, 1987, revisions to 30 CFR 772.12, nsas has complied with OSMRE's e 9, 1987, letter requiring Kansas to dopt additional coal exploration permit application requirements to ensure the proper treatment of historic properties during coal exploration.

Since the amendment incorporates the same language as the Federal regulations in effect as of July 1, 1987, the Director finds revised K.A.R. 47–7–2 to be no less stringent than SMCRA and no less effective than the Federal regulations in effect as of that date.

4. K.A.R. 47–9–1 Performance Standards

With certain previously approved exceptions, this amendment to K.A.R. 47–9–1 (c) and (d) incorporates by reference 30 CFR Parts 816 and 817 as they were in effect on July 1, 1987. The amendment thus excludes provisions suspended as of that date. Regulations suspended in whole or in part as of that date include 30 CFR 816.46(b)(2) and 817.46(b)(2), 816.49(a)(3) and 817.49(a)(3), 816.49(a)(5)(i) and 817.49(a)(5)(i), 816.49(a)(8) and 817.49(a)(8), 816.49(a)(9) and 817.49(a)(9), 816.81(a) and 817.81(a), 816.81(c)(2) and 817.81(c)(2), 816.83 and 817.83, 816.84(b)(2) and 817.84(b)(2), 816.89(d) and 817.89(d), 816.116(b)(3)(ii) and 817.116(b)(3)(ii), 816.116(c)(2) and 817.116(c)(2), 816.116(c)(4) and 817.116(c)(4), and 816.133(d) and 817.133(d). A complete explanation of the extent to which these rules are suspended and the effect of such suspension can be found in the November 20, 1986, Federal Register (51 FR 41961). In addition, the regulations governing roads at 30 CFR 816.150, 817.150, 816.151, and 817.151 are suspended in their entirety, as recorded in the February 21, 1985, Federal Register (50 FR 7275).

All these suspensions resulted from decisions of the U.S. District Court for the District of Columbia in *In re: Permanent Surface Mining Regulation Litigation II* (C.A. 79–1144, D.D.C. 1984 and 1985). However, on January 29, 1988, the U.S. Court of Appeals for the District of Columbia Circuit upheld a number of the suspended rules (*National Wildlife Federation versus Hodel*, C.A. 84–5743), which OSMRE reinstated on June 9, 1988 (53 FR 21764) The reinstated rules include 30 CFR 816.49(a)(9) and 817.49(a)(9), which allow the retention of underwater highwalls in permanent impoundments; §§ 816.81(c)(2) and 817.81(c)(2), which allow the construction of coal mine waste piles with a compaction that does not attain 90 percent of the maximum dry density determined in accordance with the standard Proctor method; and §§ 816.83 and 817.83, which permit the construction of coal mine waste piles using lifts greater than 2 feet in thickness.

As codified at 30 CFR 916.16 (a)(4), (a)(6) and (a)(7), on May 26, 1987, OSMRE required that Kansas amend its program to be no less effective than these Federal rules as modified by the suspensions. With the lifting of the suspensions and reinstatement of the rules discussed in the preceding paragraph, these requirements are now unnecessary and will be removed in this rulemaking. However, since Kansas is incorporating these rules as they were in effect on July 1, 1987, the suspensions will remain a part of the Kansas program unless and until the State further amends its program to remove them.

By excluding the possibility that 30 CFR 816.81(a) and 817.81(a), as incorporated by reference, could be interpreted as allowing the end-dumping or side-dumping of coal mine waste (see the previously referenced November 20, 1986, suspension notice), Kansas has complied with 30 CFR 916.16(a)(5), which required that the State amend its program to prohibit the construction of coal refuse piles using end- or side-dumping.

By incorporating the November 18, 1986, revisions to 30 CFR 816.106 and 817.106, as explained at 51 FR 41734, Kansas has complied with 30 CFR 916.16(a)(8), which required that the State amend its program to remove provisions allowing the incomplete elimination of highwalls on previously mined areas where there would be no adverse physical impact on preexisting highwalls.

By excluding the suspended portion of 30 CFR 816.116(c)(2) and 817.116(c)(2), Kansas has complied with 30 CFR 916.16(a)(9), which required the State to specify that revegetation success shall be determined by measurements taken during the last two years of the responsibility period.

However, by excluding 30 CFR 816.133(d) and 817.133(d) only to the extent to which they were suspended on November 20, 1986, Kansas has not fully complied with 30 CFR 916.16(a)(10), which requires that the State remove these paragraphs in their entirety. As explained in Finding 8 of the May 26, 1987, Federal Register (52 FR 19506), the amendment approved in that notice deleted the previous incorporation by reference of 30 CFR 785.16, which, under certain conditions, authorizes the granting of a permit containing a variance from the requirement to return mined lands to approximate original contour (AOC) and establishes procedural and monitoring requirements relating thereto.

However, in that amendment, Kansas failed to remove the incorporation by reference of companion rules 30 CFR

816.133(d) and 817.133(d), which establish criteria for AOC variances. Since 30 CFR 785.16(f) provides that a regulatory authority may grant variances only if it has promulgated specific rules in accordance with 30 CFR 875.16, the Director disapproved the Kansas regulations incorporating 30 CFR 816.133(d) and 817.133(d) and required Kansas to remove them. In the amendment now under consideration, Kansas does so only to the extent that they would apply a non-steep slope mining operations. Therefore, the Director is retaining his disapproval of these provisions and is revising 30 CFR 916.16(a)(10) to extend the compliance date and require that Kansas either remove these provisions in their entirety or amend its program to include corresponding permitting requirements no less effective than those contained in 30 CFR 785.16.

Kansas has also amended K.A.R. 47–9–1 (c)(2) and (c)(3) to include specific time and distance requirements for replacement of topsoil and for backfilling and grading to ensure that reclamation occurs contemporaneously with mining in a timely fashion. These requirements are identical to those previously adopted by Kansas as a policy statement and approved by OSMRE on December 31, 1987 (52 FR 49396). The Director finds that these standards are consistent with the corresponding Federal regulations at 30 CFR 816.100 and 817.100, which specify that the regulatory authority may establish schedules that define contemporaneous reclamation.

Since, except as discussed above, the amendment incorporates language identical to that of the corresponding Federal regulations in effect as of July 1, 1987, the Director finds that revised paragraphs (c) and (d) of K.A.R. 47–9–1 are no less effective than the Federal regulations in effect on that date.

5. K.A.R. 47–12–4 Land Unsuitable for Surface Mining

With certain previously approved exceptions, this amendment to K.A.R. 47–12–4 incorporates by reference 30 CFR 761.5, 761.11, 761.12, 762.5, 762.11, 762.13, 762.14, 764.13, 764.15, 764.17, 764.19, 764.21, 764.23 and 764.25 as they were in effect on July 1, 1987. The amendment thus excludes provisions suspended as of that date, including 30 CFR 764.15 (a)(3) and (a)(8) insofar as they authorized the regulatory authority to suspend the processing of lands unsuitable petitions where it finds there is no real or foreseeable potential for surface coal mining operations to occur (51 FR 41961, November 20, 1986).

The definition of "valid existing rights" at 30 CFR 761.5 is also suspended to the extent that it incorporates the "takings" test and expands the "needed for and adjacent" test to include lands for which the applicant had not obtained the necessary property rights as of August 3, 1977. As explained in the November 20, 1986, **Federal Register**, suspending these portions of the definition has the effect of leaving in place the methods used to determine the existence of valid existing rights prior to promulgation of the September 14, 1983, version of the definition (51 FR 41954). These methods include the "good-faith all permits" test and the original, unexpanded "needed for and adjacent" test. In addition, the unsuspended portion of the 1983 definition recognizes "continually created" rights with respect to areas that come under protection after August 3, 1977.

By revising its program as described above, Kansas has complied with the requirements of 30 CFR 916.16 (a)(12), (a)(13), and (a)(14) as well as the pertinent requirements of the June 9, 1987, letter from OSMRE concerning protection of historic properties. Specifically, in addition to revising the definition of "valid existing rights" as discussed above, Kansas has amended its definition of "cemetery" to include all areas where human bodies are interred, extended the protection of section 522(e) of SMCRA to all properties listed on the National Register of Historic Places (not just publicly owned sites), and deleted provisions authorizing suspension of the processing of petitions to declare lands unsuitable for mining where there is no likelihood of mining.

Since the amendment incorporates the same language as the Federal regulations in effect as of July 1, 1987, the Director finds revised K.A.R. 47–12–4 to be no less stringent than SMCRA and no less effective than the Federal regulations in effect on that date.

IV. Public and Agency Comments

As discussed above, the Director solicited public comment and provided opportunity for a public hearing on the proposed amendments. No public comments were received, and since no one requested an opportunity to testify at a public hearing, no hearing was held.

Pursuant to section 503(b) of SMCRA, 30 CFR 732.17(h)(11), comments were also solicited from various Federal agencies with an actual or potential interest in the Kansas program. The U.S. Environmental Protection Agency (EPA) concurred in the amendments, while none of the other agencies notified offered any comment.

In accordance with 30 CFR 732.17(h)(4), comments were also solicited from the State Historic Preservation Officer; however, none were received.

V. Director's Decision

Based on the above findings, the Director is approving the proposed amendment submitted by Kansas on January 26, 1988 with the exception of the incorporation by reference of 30 CFR 816.133(d) and 817.133(d), as discussed below and in Finding 4. To the extent required by 30 CFR 732.17(h)(11)(ii), the EPA has concurred in this approval (Administrative Record No. KS–410).

As explained in the findings, with the exception of the provisions of paragraph (a)(10) concerning AOC variances, the requirments of 30 CFR 916.16 either are now unnecessary or are satisfied by this amendment. Therefore, the Director is removing paragraphs (a)(1) through (a)(9) and (a)(11) through (a)(14) and is revising paragraph (a)(10) of this section as discussed in Finding 4.

Also, all disapprovals listed in 30 CFR 916.12 correspond to Federal provisions suspended by notice published in the November 20, 1986, **Federal Register** or, in the case of paragraphs (a)(7) and (a)(8), to the revised Federal rules concerning the protection of historic properties promulgated on February 10, 1987. Since this amendment incorporates the Federal rules in effect on July 1, 1987, it excludes provisions and interpretations suspended as of that date and includes the historic properties rule and previous Federal rules reinstated by the referenced suspension notice. Therefore, with the exception of that portion of paragraph (a)(4) pertaining to AOC variances as discussed in Finding 4, the Director is removing the disapprovals listed in 30 CFR 916.12.

The Federal regulations at 30 CFR Part 916 codifying decisions concerning the Kansas program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA. This approval is contingent upon the State's promulgation and approval of the proposed regulations in a form identical to that submitted for OSMRE's review with the exception of typographical errors.

Procedural Determinations

tional Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

Executive Order 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSMRE an exemption from section 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, for this action, OSMRE is exempt from the requirement to prepare a regulatory impact analysis and this action does not require regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements estabished by SMCRA and the Federal ...es will be met by the State.

...erwork Reduction Act

This rule does not contain information collection requirements which require approval by OMB under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 916

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Date: October 3, 1988.

Robert E. Boldt,

Deputy Director.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 916—KANSAS

1. The authority citation for Part 916 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 916.12 is revised to read as follows:

§ 916.12 State program provisions and amendments disapproved.

(a) The following provisions of the Kansas Administrative Regulations (K.A.R.) as submitted on April 23, 1986, ...January 26, 1988, are disapproved: ...graphs (c) and (d) of K.A.R. 47–9–1 ...far as they incorporate by reference 30 CFR 816.133(d) and 817.133(d), which establish criteria for variances from approximate original contour requirements.

(b) [Reserved]

3. A new paragraph (i) is added to § 916.15 to read as follows:

§ 916.15 Approval of regulatory program amendments.

* * * * *

(i) With the exception of those provisions disapproved in § 916.12(a), the following amendments to the Kansas Administrative Regulations (K.A.R.), as submitted to OSMRE on January 26, 1988, are approved effective October 7, 1988. Revisions to K.A.R. 47–2–75 (Definitions), 47–3–42(a) (Application for Mining Permit), 47–7–2 (Coal Exploration), 47–9–1 (c) and (d) (Performance Standards), 47–10–1 (Underground Mining), and 47–12–4 (Land Unsuitable for Surface Mining) to incorporate by reference the corresponding Federal regulations as they were in effect on July 1, 1987, and to include specific contemporaneous reclamation standards.

4. Section 916.16 is revised to read as follows:

§ 916.16 Required regulatory program amendments.

(a) By September 1, 1989, Kansas shall (1) submit revisions to K.A.R. 47–9–1 (c) and (d) to remove the incorporation by reference of 30 CFR 816.133(d) and 817.133(d), (2) submit revisions to K.A.R. 47–3–42 to include provisions no less effective than those of 30 CFR 785.16, or (3) otherwise propose to amend its program to be no less effective than the Federal regulations with respect to variances from approximate original contour.

(b) [Reserved]

§ 916.20 [Amended]

5. The authority citation for § 916.20 is removed.

[FR Doc. 88–23214 Filed 10–6–88; 8:45 am]

BILLING CODE 4310–05–M

---

30 CFR Part 917

Approval of Amendment to the Kentucky Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Final rule.

SUMMARY: The Director of OSMRE is announcing the approval of a proposed amendment submitted by the Commonwealth of Kentucky as a modification to its permanent regulatory program (hereinafter referred to as the Kentucky Program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of a resubmittal of the provisions of House Bill 869 and supporting documents. The amendment provides that orders of the Secretary of the Natural Resources and Environmental Protection Cabinet ("the Cabinet") are appealable to the circuit court of the county where the violation occurred rather than to the Circuit Court of Franklin County.

EFFECTIVE DATE: October 7, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. W. Hord Tipton, Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504; Telephone: (606) 233–7327.

SUPPLEMENTARY INFORMATION:

I. Background on the Kentucky Program

The Kentucky program was conditionally approved by the Secretary of the Interior on May 18, 1982. Information pertinent to the general background of the Kentucky program submission, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Kentucky program can be found in the May 18, 1982 Federal Register (47 FR 21404–21435). Subsequent actions concerning the conditions of approval and proposed program amendments are identified at 30 CFR 917.11, 30 CFR 917.13, 30 CFR 917.15, 30 CFR 917.16 and 30 CFR 917.17.

II. Discussion of Proposed Amendment

By letter dated April 29, 1986 (Administrative Record No. KY–703), Kentucky submitted to OSMRE, pursuant to 30 CFR 732.17, certain revisions to the Kentucky program as contained in Kentucky House Bill 869. That bill, passed by the General Assembly with an effective date of July 15, 1986, amended the Kentucky Revised Statutes (KRS) at 350.032 to provide that final orders of the Cabinet are appealable to the circuit court of the county where the violation occurred rather than to the Circuit Court of Franklin County.

On June 9, 1986, OSMRE notified Kentucky that, prior to approval of the provisions of House Bill 869, it must submit a plan of implementation (Administrative Record No. KY–709). Kentucky responded with a statement of anticipated costs, a description of available resources and a discussion of organizational and programmatic consequences (Administrative Record

No. KY-710). On July 18, 1986, OSMRE published its disapproval of the amendment in the **Federal Register** (51 FR 26002-26008) based on the fact that no provision was made for additional funding and/or staffing for the additional workload that would likely result from its implementation (Administrative Record No. KY-718). However, because the Commonwealth did not repeal the legislation, operators did in fact file appeals in local circuit courts and those courts accepted and heard such appeals.

Therefore, by letter dated May 28, 1987 (Administrative Record No. KY-738), Kentucky resubmitted the provisions of House Bill 869 for reconsideration by OSMRE. In addition, Kentucky submitted information to justify the resubmittal on the grounds that the workload resulting from the *de facto* implementation of House Bill 869 was much less than anticipated. On July 13, 1987, OSMRE published a notice in the **Federal Register** (51 FR 26158-26159) announcing receipt of the resubmitted amendment and inviting public comment on its adequacy. The public comment period ended August 12, 1987. Four comments were received. The public hearing scheduled for August 7, 1987, was not held because no one requested an opportunity to testify.

On January 22, 1988, OSMRE requested that, since actual workload data was available, the Cabinet submit data on all relevant appeals filed in local circuit courts as a result of passage of House Bill 869 (Administrative Record No. KY-788). On February 4, 1988, Kentucky provided information of the number and status of local appeals; the resources, travel time and associated costs expended by the Cabinet on such appeals; decisions enjoining the Cabinet from enforcing sections of the law, and the time delays experienced in the appeals process (Administrative Record No. KY-791). On March 7, 1988, OSMRE published a notice in the **Federal Register** (53 FR 7212-7213) reopening the public comment period on the proposed amendment and informing the public of the availability of the additional materials. The public comment period closed April 6, 1988.

III. Director's Findings

As detailed in the July 18, 1986 **Federal Register** (51 FR 20006-20007), and explained in the section of this notice entitled "Discussion of Proposed Amendment", the Director found that the provisions of House Bill 869, which changes the venue for appeals, were not inconsistent with the corresponding Federal provisions of section 526(e) of SMCRA. This paragraph of the Federal statute states that actions of the State regulatory authority pursuant to an approved State program shall be subject to judicial review by a court of competent jurisdiction in accordance with State law. However, the Director disapproved the proposed amendment because the Commonwealth lacked the funding and legal resources necessary to implement its provisions, and thus did not meet the criteria for approval of State programs and program amendments at section 503(a)(3) of SMCRA and 30 CFR 732.15(d) and 732.17(h)(10). In making this decision, the Director stated that the amendment could be resubmitted at such time as additional staffing and funding were provided to assure the effective implementation of the amendment.

On May 28, 1987, Kentucky resubmitted the amendment with supplementary information justifying the resubmittal based on workload, funding and organizational considerations. Kentucky stated that the number of appeals originally anticipated had not materialized, specifically, that only two percent of all final orders had been appealed in the year following passage versus the twenty-five percent predicted in June 1986. Therefore, earlier estimates of the resources necessary for effective implementation are inaccurate. Kentucky indicated that the additional resource demands would be met by a reorganization designed to more efficiently use existing legal staff and a program amendment to eliminate the automatic scheduling of preliminary hearings for every notice, order and penalty issued, which the Director is reviewing in a parallel rulemaking action.

This information tentatively indicates that Kentucky will have the funding and legal resources necessary to implement the provisions of House Bill 869 and that the amendment is therefore consistent with 30 CFR 732.15(d) and section 503(a)(3) of SMCRA. However, the Director notes that the resource savings resulting from elimination of the automatic scheduling of preliminary hearings are highly uncertain, as is the number of appeals likely to be filed once the amendment is actually approved. Therefore, since the Director is unable to conclusively determine whether the Commonwealth has the resources necessary to effect this amendment in a manner which provides timely enforcement of the State program over the long term, he is approving this amendment on a two-year trial basis.

In addition, he is requiring that, two months prior to the 1990 meeting of the Kentucky General Assembly, the Cabinet submit a report on the effect of the implementation of this amendment. The report shall contain a complete listing of all appeals entered in local circuit courts, their status, the resources expended by the Cabinet in defense of each appeal, and the results of each action. The report shall also include information on any time delays experienced and a listing of all preliminary decisions that have failed to exhaust the administrative process.

IV. Public and Agency Comments

Agency Comments

Pursuant to section 503(b) of SMCRA and 30 CFR 732.17(h)(11)(i), comments were solicited from various Federal agencies. No substantive comments were received.

Public Comments

As detailed in the section of this notice entitled "Discussion of Proposed Amendment," OSMRE twice provided opportunity for public comment on this amendment.

Comments in support of the amendment were submitted by Harold P. Quinn, Jr. on behalf of the National Coal Association, Charles J. Baird on behalf of the Baird and Baird, P.S.C., and Bill K. Caylor on behalf of the Kentucky Coal Association. These commenters argued that House Bill 869 should be approved since it is in accordance with section 526 of SMCRA, which provides that the designation of courts of competent jurisdiction is a matter of State law. The Director agrees that the amendment is consistent with section 526 of SMCRA, but, as discussed in the findings, this section of SMCRA is not the sole basis for his decision.

Thomas J. FitzGerald submitted comments opposing the amendment on behalf of the Kentucky Resources Council. He stated that implementation of House Bill 869 would result in uneven and inconsistent enforcement of the Kentucky program. As noted in the July 18, 1986 **Federal Register** (51 FR 26006-26007), the Director agrees that implementation could result in inconsistent judicial decisions. While this inconsistency may be an undesirable result of decentralization, it does not render House Bill 869 inconsistent with SMCRA, which requires that appeals of Federal actions be filed in the Federal district courts for the area in which the mine is located, a requirement analogous to that of House Bill 869.

Mr. FitzGerald argued that the change of venue for appeals would place an

additional strain on the legal resources of the Commonwealth and would adversely affect performance. Mr. McGerald also stated that, to the extent that the change of venue to local circuit courts results in a failure to provide adequate enforcement, the proposed amendment fails to meet the requirements of section 521 of SMCRA. The commenter further argued that the additional materials submitted by Kentucky demonstrate that the State does not have the capability of carrying out the provisions of SMCRA and meeting its purposes, and that the decentralization of judicial review has not enabled the Cabinet to obtain timely decisions on appeals of enforcement actions and has resulted in cases filed in advance of proper exhaustion of administrative remedies. As discussed previously, the State has submitted actual data indicating that it will have the funding and legal resources necessary to implement the provisions of House Bill 869. The Director therefore does not agree with the commenter's assertion that Kentucky has demonstrated that it lacks the capability to carry out the provisions of SMCRA and meet its purposes. However, the Director does have some reservations concerning the level of funding and legal resources that may be needed to properly implement House Bill 869 once it is fully approved. Therefore, he is approving this amendment solely on a trial basis. To obtain permanent approval, the State must fully document and demonstrate its ability to effectively implement the provisions of the amendment without adversely affecting enforcement of its permanent regulatory program.

V. Director's Decision

Based on the above findings, the Director is approving the proposed amendment, as submitted on May 28, 1987, and contained in House Bill 869, on a trial basis until December 31, 1990. In addition, the Director is requiring that Kentucky submit a report detailing the impact of implementation on agency resources and the judicial review process. The report shall be submitted two months prior to the 1990 session of the General Assembly of Kentucky and shall contain information on the number of appeals filed in circuit courts, their outcome and status, and the funding and staff resources allocated to defending the Cabinet in these actions. The report shall also include information on the number of decisions enjoining the Cabinet from enforcing sections of the law, time delays encountered in the appeals process, and the number of appeals heard in which the applicant for review failed to exhaust all administrative remedies.

Following receipt of this report and solicitation of public comment, the Director will determine whether House Bill 869 should be approved on a permanent basis. If the report and the Director's evaluation indicate that deficiencies exist, the Director will require that Kentucky take such corrective actions as are necessary to ensure that the State program is no less stringent than SMCRA and no less effective than the Federal regulations and that it is properly implemented. If these actions are not taken, the approval will not be renewed.

The Federal rules at 30 CFR Part 917 are being amended to implement the Director's decision and remove the previous disapproval of this amendment as codified at 30 CFR 917.17(c). This final rule is being made effective immediately to expedite the State program amendment process and encourage States to conform their programs to the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared for this rulemaking.

Executive Order 12291 and Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a regulatory impact analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 917

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Date: October 3, 1988.

Robert E. Boldt,

Deputy Director, Office of Surface Mining Reclamation and Enforcement.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of the Federal Regulations is amended as set forth below:

PART 917—KENTUCKY

1. The authority citation for Part 917 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. In § 917.15, a new paragraph (z) is added to read as follows:

§ 917.15 Approval of regulatory program amendments.

* * * * *

(z) The following amendment to the Kentucky Revised Statutes (KRS), as resubmitted to OSMRE on May 28, 1987, is approved effective October 7, 1988: Revisions to KRS 350.032 as contained in House Bill 869 to provide that final orders of the Secretary of the Natural Resources and Environmental Protection Cabinet are appealable to the circuit court of the county where the violation occurred rather than to the Circuit Court of Franklin County. This approval will expire on December 31, 1990.

3. Section 917.16 is amended by adding paragraph (a) to read as follows:

§ 917.16 Required regulatory program amendments.

(a) No later than two months prior to the start of the 1990 session of the Kentucky General Assembly, Kentucky shall submit to OSMRE a report detailing the effects of the implementation of House Bill 869. The report shall include information on the number of final orders of the Cabinet appealed to the local circuit courts, their status and outcome, and the funding and staff resources allocated to represent the Commonwealth in these proceedings. In addition, the report shall include information on the number of decisions enjoining the Cabinet from enforcing sections of the law, time delays encountered in the appeal process, and whether applicants for judicial review have exhausted all available administrative remedies.

* * * * *

§ 917.17 [Amended]

4. Section 917.17 is amended by removing paragraph (c).

[FR Doc. 88-23213 Filed 10-6-88; 8:45 am]
BILLING CODE 4310-05-M

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Part 1150

Practice and Procedures for Compliance Hearings

AGENCY: United States Architectural and Transportation Barriers Compliance Board (ATBCB).

ACTION: Final rule.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (A&TBCB or Board) at its July 13, 1988, meeting adopted amendments to its Practice and Procedures for Compliance Hearings. The provisions of the Agency's Practice and Procedures for Compliance Hearings were amended to (1) improve the orderly function of the informal complaint resolution process and pre-hearing process; (2) conform the designation of Chair to the recent amendments to the Statement of Organization and Procedures and the Authorities and Delegations; (3) to provide for successive numerical designations; and (4) to reflect the current address of the A&TBCB. The amendments to the Practice and Procedures for Compliance Hearings are being published so that all affected persons will be fully informed about procedures governing the compliance process and hearings.

EFFECTIVE DATE: July 13, 1988.

FOR FURTHER INFORMATION CONTACT: Elizabeth Stewart, Acting General Counsel, Architectural and Transportation Barriers Compliance Board, 1111 18th Street, NW., Suite 501, Washington, DC 20036-3894, (202) 653-7834 (voice or TDD). This document is available at the above address on cassette for persons with visual impairments.

SUPPLEMENTARY INFORMATION: Pursuant to section 502 of the Rehabilitation Act of 1973, Pub. L. 93-112, 87 Stat. 391, as amended, the A&TBCB adopted regulations to ensure compliance with standards issued under the Architectural Barriers Act of 1968, 42 U.S.C. 4151 *et seq.*

The changes passed by the ATBCB at the July 13, 1988, meeting are as follows:

(1) All references to the designation "Chairperson" are amended to read "Chair."

(2) The designated office address is amended to reflect the current address of the A&TBCB.

(3) Copies of complaints shall be sent to all interested parties by regular mail instead of certified mail, return receipt requested.

(4) Sections 1150.53 and 1150.54 contained in the text are renumbered to read §§ 1150.52 and 1150.53 respectively.

List of Subjects in 36 CFR Part 1150

Administrative practice and procedures, Buildings, Handicapped.

Accordingly, 36 CFR Part 1150 is amended as set forth below.

By vote of the Board on July 13, 1988.

William J. Tangye,

Chair, Architectural and Transportation Barriers Compliance Board.

For the reasons stated in the preamble, Chapter XI of Title 36, Code of Federal Regulations, is amended as follows:

PART 1150—[AMENDED]

1. The authority citation for Part 1150 is revised to read as follows:

Authority: 29 U.S.C. 792, as amended.

2. Section 1150.4 is revised to read as follows:

§ 1150.4 Definitions.

"A&TBCB" means the Architectural and Transportation Barriers Compliance Board.

"Agency" means Federal department, agency, or instrumentality as defined in sections 551(1) and 701(b)(1) of Title 5, United States Code, or an agency official authorized to represent the agency. It includes any executive department or independent establishment in the Executive Branch of the government, including wholly owned government corporations, and any establishment in the legislative or judicial branch of the government, except the Senate, the House of Representatives, and the Architect of the Capitol and any activities under his direction.

"Alteration" means any change in a building or facility or its permanent fixtures or equipment. It includes, but is not limited to, remodeling, renovation, rehabilitation, reconstruction, changes or rearrangement in structural parts, and extraordinary repairs. It does not include normal maintenance, reroofing, interior decoration, or changes to mechanical systems.

"Architectural Barriers Act" means the Architectural Barriers Act of 1968, Pub. L. 90-480, as amended, 42 U.S.C. 4151 *et seq.*

"Building or facility" means all or any portion of buildings, structures, equipment, roads, walks, parking lots, parks, sites, or other real property or interest in such property.

"Chair" means the Chair of the A&TBCB.

"Complaint" means any written notice of an alleged violation, whether from an individual or organization, or other written information reasonably indicating to the Executive Director a violation of the standard.

"Construction" means any section of a new building or an addition to an existing building.

"Day" means calendar day.

"Executive Director" means the A&TBCB Executive Director.

"Extraordinary repair" means the replacement or renewal of any element of an existing building or facility for purposes other than normal maintenance.

"Judge" means an Administrative Law Judge appointed by the A&TBCB and assigned to the case in accordance with either section 3105 or 3314 of Title 5, United States Code.

"PER" means Provisional Expedited Relief.

"Respondent" means a party answering the citation, including PER Citation.

"Section 502 of the Rehabilitation Act" means section 502 of the Rehabilitation Act of 1973, Pub. L. 93-112, 29 U.S.C. 792, as amended.

"Standard" means any standard for accessibility and usability prescribed under the Architectural Barriers Act.

3. Section 1150.12 is revised to read as follows:

§ 1150.12 Complainants.

(a) Any person may submit a complaint to the A&TBCB alleging that a building or facility does not comply with applicable standards issued under the Architectural Barriers Act. Complaints must be in writing and should be sent to: Executive Director, Architectural and Transportation Barriers Compliance Board, 1111 18th Street, Suite 501, Washington, DC 20036-3894.

A complaint form is available at the above address. Complaints may, but need not, contain (1) the complainant's name and where he/she may be reached, (2) the facility or building and, if known, the funding agency, and (3) a brief description of the barriers. A complaint form is available at the above address.

(b) The A&TBCB shall hold in confidence the identity of all persons

JAN 11 1989

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Minerals Management Service

30 CFR Part 206

43 CFR Part 3590

[AA-660-88-4133-02; Circular No. 2612]

Product Valuation; and Solid Minerals (Other Than Coal) Exploration and Mining Operations; Streamlining Amendments

AGENCY: Bureau of Land Management, Interior, and Minerals Management Service, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking amends the provisions of 43 CFR Part 3590 concerning solid minerals exploration and mining operations to streamline and clarify the existing regulations. The final rulemaking also eliminates duplication of regulations which are currently under the authority of the Minerals Management Service, and transfers a section dealing with product valuation to the title of the Code of Federal Regulations containing MMS regulations.

EFFECTIVE DATE: November 7, 1988.

ADDRESS: Any suggestions or inquiries should be sent to: Director (660), Bureau of Land Management, Room 3511, Main Interior Bldg., 1800 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: W. Vance Greer or Paul Politzer, (202) 343-7722.

SUPPLEMENTARY INFORMATION: A proposed rulemaking containing the revisions of 43 CFR Part 3590 was published in the Federal Register on January 28, 1988 (53 FR 2055) with a 60 day comment period. During the comment period comments were received from 6 sources, 4 from mining companies, 1 from a law firm and 1 from an individual. All the comments were given careful consideration and will be addressed in the preamble under the specific section relating to the comment.

The title of Group 3500 was revised to read, "Management of Solid Minerals Other Than Coal". The removal of the exclusion of oil shale from this title is done in order to allow existing oil shale leases to be governed by Part 3590 of Group 3500, even though oil shale cannot be leased under Part 3500.

Section 3590.0-5 Definitions.

Three comments were received on this section. One comment suggested that the terms "Service" and "Authorized Officer" be defined in this section. The comment was rejected because both terms have been defined at 43 CFR 3500.0-5 and were not defined in this Part to avoid repetition. However, the term "Service", where used in the text, has been changed to "Minerals Management Service" (MMS) in the final rulemaking to avoid possible confusion. Two comments were received regarding the definition of "Ultimate Maximum Recovery". Both comments wanted economic factors to be incorporated into the definition and the determination of ultimate maximum recovery. One comment also suggested that the definition was too general and should include qualifiers to allow for geologic conditions and mining methods. The same comment objected to the use of the term "standard industry operating practices" because the same practice may result in different recovery rates

depending on several variable factors. The comments were rejected because this rulemaking must retain a certain amount of flexibility in order to cover a wide variety of commodities and mining conditions. Geologic conditions, mining methods, economic factors and other variables affecting ultimate maximum recovery are to be addressed during the mine plan approval process. This procedure will retain the concept of ultimate maximum recovery, which is to avoid high grading and the loss of recoverable reserves, and will allow the operator and the authorized officer to consider any local factors.

Section 3590.1 Confidentiality of information.

One comment was received on this section. The comment was concerned that the rules no longer specifically stated that "commercial and financial information would be kept confidential" and also wanted a statement in the final rules which would protect information previously submitted if not stamped "confidential information" as required by the final rules. The comment was accepted in part. The final rules contain a statement that information previously submitted will be made public only in accordance with the Freedom of Information Act (FOIA). FOIA contains specific provisions regarding what will be held confidential, including the commercial and financial information of concern to the author of the comment. After careful consideration it was decided not to repeat the provisions of FOIA in the final rules, because the Department has regulations in 43 CFR Part 2 that ensure that information is released to the public only in accordance with FOIA.

Section 3590.2 Responsibility of the authorized officer.

Two comments were received on this section. One comment preferred "frequent inspections" in paragraph (a) to the proposed terminology which requires inspections to be conducted "at least quarterly", because it allowed more flexibility in scheduling inspections. The comment was rejected because the provision for quarterly inspections is a minimum and does not restrict the authorized officer if more inspections are needed to ensure compliance. Flexibility is not diminished because inspections may be scheduled any time during the quarter. One comment stated that paragraph (c), relating to air and water quality, was "a duplication of regulatory efforts by State and Federal environmental agencies" and suggested that the section be removed or qualified to reflect the Bureau's role as one of coordination with State and Federal agencies having jurisdiction over air and water quality issues. In response to this comment the final rules in this subpart were revised to clarify BLM's role. The subsection was not removed, in order to ensure regulatory authority for the Bureau to monitor air and water provisions of NEPA and to enforce those requirements in the absence of other State and Federal agencies. The subsection was revised to require coordination with appropriate State and Federal agencies. Paragraph (d), also relating to air and water monitoring, was removed in response to this comment. Paragraph (h) was revised as a result of internal review to clarify that BLM is the agency having administrative jurisdiction over cases of mineral trespass.

Section 3592.1 Operating plans.

Four comments were received on this section. One comment suggested that subsection (a) be amended to specify "that a new operating plan is not needed every time a new lease is mined" in cases where a single operation may contain more than one lease. The final rulemaking is amended in response to this comment to make it clear that an operation plan may include more than one permit or lease. One comment on paragraph (c) opposed the "minimum" requirements of the mine plan and suggested that this section be reworded to read "my or all of the following". This part of the comment was rejected because these are the minimum requirements and issues required by law and policy to be addressed before a mine plan can be approved. The comment also questioned the requirement that certain environmental data be submitted when there would be no surface disturbance on public lands. The final rulemaking is amended to show that these requirements apply only to Federal and Indian leases, licenses, and permits. The Bureau recognizes that different commodities and mining periods are involved and that there may be cases where some particular requirement may not apply. If this is the case the requirement must still be addressed by explaining why it is not applicable.

Two comments questioned the practicality and need for the amount of detail required in the mine plan submission, specifically citing the diffficulty in trying to forecast ultimate maximum recovery. One comment stated that it was unrealistic to "force the operator to adhere to narrow forecasted mining sequences, tonnage and grade requirements". The comments were rejected because the information required is necessary for the Bureau to make determinations regarding conservation of the resource and to ensure that the public interests are served. Mine plan modifications are to be used to correct those segments of a mine plan where new information indicates that the best estimate at time of plan approval was incorrect.

One comment suggested that the plan modification requirements were unrealistic because plans sometimes change frequently and it was impractical to wait for BLM approval. Modifications are intended to reflect changes and/or oversights that could have a major impact on resource recovery, environmental concerns, or protection of other resources on the lease. It is not intended to monitor normal production scheduling or the frequent movement of equipment. If a modification is necessary and time is a factor, verbal approval of the modification may be given by the authorized officer and the documentation submitted later.

All comments received on the reduction in the number of mine plan copies to be submitted from 5 copies to 2 copies were favorable. However, internal review indicated that 2 copies were inadequate when the surface management agency was other than the BLM. The final rulemaking is amended to require 3 copies when this is the case. Paragraph (c)(3) was also amended to clarify that each copy of the plan needs to be accompanied by only one copy of the map or aerial photograph required by this section.

Section 3594.1 Ultimate maximum recovery.

Two comments were received on this section. One comment stated that paragraph (a) was vague and indicated that the requirement relating to protection of other resources required "procognitive ability". The comment was rejected because the concept of ultimate maximum recovery, as stated in the regulations and discussed in this preamble under § 3590.0–5, is clearly stated. Mining operations are expected to achieve maximum recovery of the reserves giving due consideration to environmental concerns, mining conditions and other factors which may affect such recovery. If other resources are contained within the area to be mined, the BLM is required to consider the potential loss of those resources during the mine plan approval process. It is not considered procognitive to study the information available and make a determination regarding what measures, if any, should be taken to

protect other resources. One comment stated that information required in paragraph (b) was covered in § 3593.1 relating to submission of geologic and geophysical data. The final rulemaking is revised to clarify that this requirement pertains to new or different information discovered during the course of mining.

Section 3594.5 Minerals soluble in water; brines; minerals taken in solution.

One comment was received on this section. The comment suggested that this section be reorganized for clarity and the last part revised to specify conditions where mineral solutions could be taken within 500 feet of the lease boundary. The final rulemaking is revised in response to this comment by dividing the section into 3 subsections and amending the language to show that brines may be taken within 500 feet of the lease boundary if approval is granted by the authorized officer.

A new paragraph (d) was added to clarify that procedures used to allocate brine production from a combination of Federal and non-Federal lands would be addressed in the mine plan.

Section 3595.1 Surface openings.

At the request of a comment, a new paragraph (c) has been added to this section to clarify the requirements for the abandonment of wells used in solution mining or brine extraction.

Section 3598.1 Milling.

One comment was received on this section, suggesting that the term "approved practices" should be reinstated and the phrase "established requirements" deleted. The comment was accepted because the term more accurately expresses the intended meaning and the final rulemaking is amended accordingly.

Section 3597.1 Books of account.

One comment was received on this section opposing the provisions permitting BLM to request and receive any production data not submitted to MMS. The most apparent concern was the amount of confidential data associated with royalty reporting to MMS. The final rulemaking is amended in paragraph (b) to read "production reporting" instead of "royalty reporting", to provide that only production data and not royalty data may be required by BLM, because MMS is responsible for royalty accounting. The Bureau retains authority to request and receive production data if there is a demonstrated need to verify production and the information needed is not being submitted to MMS.

Section 3597.2 Value basis for royalty computation.

One comment was received on this section suggesting that BLM retain this authority because the "rule should not be left open to unclear future rulings or arbitrary changes by the MMS". The comment was rejected because this authority has been delegated by the Secretary to MMS. To make this clear, this section has been redesignated without amendment in this final rulemaking as 30 CFR 206.301, in the regulations of the Minerals Management Service.

The principal author of this final rulemaking is W. Vance Greer of the Division of Solid Mineral Operations, Bureau of Land Management, assisted by the staff of the Division of Legislation and Regulatory Management.

It is hereby determined that this final rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

The information collection requirement(s) contained in this final rulemaking have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1004–0142.

List of Subjects in 30 CFR Part 206

Continental shelf, Geothermal energy, Government contracts, Mineral royalties, Oil and gas exploration, Public lands—mineral resources.

List of Subjects in 43 CFR Part 3590

Administrative practice and procedure, Indian lands—mineral resources, Mineral royalties, Mines, Public lands—mineral resources, Reporting and recordkeeping requirements.

Under the authorities cited below, Part 206 of Title 30 of the Code of Federal Regulations and Part 3590, Group 3500, Subchapter C, Chapter II of Title 43 of the Code of Federal Regulations are amended as set forth below:

J. Steven Griles,

Assistant Secretary of the Interior.

September 30, 1988.

1. The authority citation for 30 CFR Part 206 continues to read as follows:

Authority: 25 U.S.C. 396 *et seq.*; 25 U.S.C. 396a *et seq.*; 25 U.S.C. 2101 *et seq.*; 30 U.S.C. 181 *et seq.*; 30 U.S.C. 351 *et seq.*; 30 U.S.C. 1001 *et seq.*; 30 U.S.C. 1701 *et seq.*; 43 U.S.C. 1301 *et seq.*; 43 U.S.C. 1331 *et seq.*; 43 U.S.C. 1801 *et seq.*

PART 206—[AMENDED]

§ 206.301 [Redesignated from 3597.2]

§ 3597.2 Redesignated as § 206.301

2. Section 3597.2 is redesignated as 30 CFR 206.301.

3. The title of Group 3500 is revised to read:

Group 3500—Management of Solid Minerals Other Than Coal

4. Part 3590 is revised to read:

PART 3590—SOLID MINERALS (OTHER THAN COAL) EXPLORATION AND MINING OPERATIONS

Note: There are many leases and agreements currently in effect, and which will remain in effect, involving Federal leases which specifically refer to the United States Geological Survey, Minerals Management Services or the Conservation Division. These leases and agreements also often specifically refer to various officers as Supervisor, Conservation Manager, Deputy Conservation Manager, Minerals Manager and Deputy Minerals Manager. In addition, many leases and agreements specifically refer to 30 CFR Part 231 or specific sections thereof. Those references shall now mean the Bureau of Land Management or Minerals Management Service, as appropriate.

Subpart 3590—Solid Minerals (Other than Coal) Exploration and Mining Operations—General

Sec.

3590.0–1 Purpose.
3590.0–2 Policy.
3590.0–3 Authority.
3590.0–5 Definitions.
3590.0–7 Scope.
3590.1 Confidentiality of information.
3590.2 Responsibility of the authorized officer.

Subpart 3591—General Obligations of Lessees, Licensees and Permittees

3591.1 General obligations of lessees, licenses and permittees.
3591.2 Forms and reports.

Subpart 3592—Plans and Maps

3592.1 Operating plans.
3592.2 Maps of underground workings and surface operations.
3592.3 Production Maps.

Subpart 3593—Bore Holes and Samples

3593.1 Core or test hole, cores, samples, cuttings.

Subpart 3594—Mining Methods

3594.1 Ultimate maximum recovery.
3594.2 Support pillars.
3594.3 Boundary pillars and isolated blocks.
3594.4 Development on leased lands through adjoining mines as part of a mining unit.
3594.5 Minerals soluble in water; brines; minerals taken in solution.

Subpart 3595—Protection Against Mining Hazards

3595.1 Surface openings.
3595.2 Abandonment of underground workings.

Subpart 3596—Waste From Mining or Milling

3596.1 Milling.
3596.2 Disposal of waste.

Subpart 3597—Production Records

3597.1 Books of account.
3597.2 Audits.

Subpart 3598—Inspection and Enforcement

3598.1 Inspection of underground and surface conditions; surveying, estimating and study.
3598.2 Issuance of orders.
3598.3 Service of notices, instructions and orders.
3598.4 Enforcement orders.
3598.5 Appeals.

Authority: The Mineral Leasing Act as amended and supplemented (30 U.S.C. 181 *et seq.*); the Mineral Leasing Act for Acquired Lands, as amended (30 U.S.C. 351–359); the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4331 *et seq.*); the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*); Reorganization Plan No. 3 of 1946 (5 U.S.C. Appendix); sec. 3 of the Act of September 1, 1949 (30 U.S.C. 192c); the Act of June 30, 1950 (16 U.S.C. 508(b)); the Act of June 8, 1926 (30 U.S.C. 291–293); the Act of March 3, 1933, as amended (47 Stat. 1487); sec. 10 of the Act of August 4, 1939 (43 U.S.C. 387); the Act of October 8, 1964 (16 U.S.C. 460n *et seq.*); the Act of November 8, 1965 (16 U.S.C. 90c *et seq.*); the Act of October 27, 1972 (16 U.S.C. 460dd *et seq.*); the Alaska National Interest Lands Conservation Act (16 U.S.C. 460mm-2-460mm-4); the Independent Offices Appropriation Act (31 U.S.C. 9701); the Combined Hydrocarbon Leasing Act of 1981 (95 Stat. 1070); the Act of May 27, 1908 (35 Stat. 315); the Act of March 3, 1931 (95 Stat. 1070); the Act of May 27, 1908 (35 Stat. 315); the Act of March 3, 1909, as amended (25 U.S.C. 396); the Act of May 11, 1938, as amended (25 U.S.C. 396a-396q); the Indian Mineral Development Act of 1982 (25 U.S.C. 2101 *et seq.*).

Subpart 3590—Solid Minerals (Other Than Coal) Exploration and Mining Operations—General

§ 3590.0–1 Purpose.

The purpose of the regulations in this part is to promote orderly and efficient prospecting, exploration, testing, development, mining and processing operations and production practices without waste or avoidable loss of minerals or damage to deposits; to encourage maximum recovery and use of all known mineral resources; to promote operating practices which will avoid, minimize or correct damage to the environment—land, water and air—and avoid, minimize or correct hazards to public health and safety; and to obtain a proper record and accounting of all minerals produced.

§ 3590.0–2 Policy.

The regulations in this part are administered under the direction of the Director, Bureau of Land Management.

§ 3590.0–3 Authority.

Authority for carrying out the regulations in this part is set out in § 3500.0–3 of this title, unless otherwise noted.

§ 3590.0–5 Definitions.

As used in this part, the term: (a) "Established requirements" means applicable law and regulations; lease, license or permit terms, conditions and special stipulations; approved mine or exploration plan requirements; and orders issued by the authorized officer.

(b) "General mining order" means a formal numbered order issued in a rulemaking procedure by the Department of the Interior which implements the regulations in this part and applied to mining and related operations.

(c) "Lessee" means any person, partnership, association, corporation or municipality that holds a mineral lease, through issuance or assignment, in whole or part, which lease is subject to the provisions of this part.

(d) "Licensee" means any person, partnership, association, corporation or municipality that holds a mineral license, through issuance or assignment, in whole or part, which license is subject to the provisions of this part.

(e) "Permittee" means any person, partnership, association, corporation or municipality that holds a mineral prospecting permit, through issuance, or assignment, in whole or part, which permit is subject to the provisions of this part.

(f) "Operator" means anyone authorized to conduct operations pursuant to the regulations in this part.

(g) "Reclamation" means the measures undertaken to bring about the necessary reconditioning or restoration of lands or water affected by exploration, mining, on-site processing operations or waste disposal in a manner which, among other things, will prevent or control on-site or offsite damage to the environment.

(h) "Ultimate maximum recovery" means that all portions of a leased Federal mineral deposit shall be mined, based on standard industry operating practices. The requirement to achieve ultimate maximum recovery does not in any way restrict the authorized officer's authority to ensure the conservative of the mineral resource and protection of the other resources.

§ 3590.0–7 Scope.

The regulations in this Part govern operations for the discovery, testing, development, mining, reclamation, and processing of all minerals under lease, license or permit issued for Federal lands under the regulations in Group 3500 of this title or Part 3140 of this title. For operations involving the extraction of hydrocarbon from tar sands or oil shale by in-situ methods utilizing boreholes or wells, Part 3160 of this title is applicable. These regulations also govern operations for all minerals on Indian tribal lands and allotted Indian lands leased under 25 CFR Parts 211 and 212. Further, when the regulations in this part related to matters included in 25 CFR Part 215 or 216 the regulations in this Part shall be considered as supplemental and the regulations in 25 CFR Part 215 or 216 shall govern to the extent of any inconsistencies.

§ 3590.1 Confidentiality of information.

(a) Information obtained under this Part and on file shall be open for public inspection and copying during regular office hours, pursuant to the provisions of the Freedom of Information Act (5 U.S.C. 522(b)) and Part 2 of this title. Upon termination of a lease, license, or permit, whether by expirations of its terms or otherwise, such information shall become available to the public.

(b) Information requested to be kept confidential under this section shall be clearly identified by the lessee, licensee or permittee by marking each page of documents submitted with the words "Confidential Information" at the top of the page. All pages so marked shall be in a separate volume(s) from other portions of the submitted materials. All information not marked, "Confidential Information" shall be available for public inspection, except that information previously submitted and not marked will be available for public inspection, only in accordance with the Freedom of Information Act.

(c) Confidential and privileged information obtained from a lessee under this part on any Indian lease shall be available only to the Tribe or allotted

Indian lessor, their designated agent or authorized Department of the Interior officials. Such information shall not be made available to any other party without the express authorization of the Tribe or allotted Indian lessor.

§ 3590.2 Responsibility of the authorized officer.

The authorized officer shall regulate prospecting, exploration, testing, development, mining, processing operations, and reclamation authorized under this part. The duties of the authorized officer include, but are not limited to, the following:

(a) Approval of operating plans and plan modifications after preparation of appropriate environmental analyses. Prior to approving a plan, the authorized officer shall consult with the agency having jurisdiction over the lands with respect to the surface protection and reclamation aspects of such plan.

(b) Inspection, at least quarterly, of leased, licensed or permitted lands where operations for discovery, testing, development, mining, reclamation, or processing of minerals are being conducted.

(c) Inspection and regulation of such operations for the purpose of preventing waste of mineral substances or damage to formations and deposits containing them, or damage to other formations, deposits or nonmineral resources affected by the operations.

(d) Inspecting exploration and mining operations to determine the adequacy of water management and pollution control measures taken for the protection of the quality of surface and groundwater resources and the adequacy of emission control measures taken for the protection of air quality. Such inspection shall be conducted as necessary and shall be fully coordinated with all State and Federal agencies having jurisdiction.

(e) Requiring operators to conduct operations in compliance with established requirements, including the law, regulations, the terms and conditions of the lease, license or permit, the requirements of approved exploration or mining plans, notices and orders and special stipulations.

(f) Obtaining the records of production of minerals and other information as necessary in order to verify that production reported to the Minerals Management Service for royalty purposes is an accurate accounting of minerals produced.

(g) Acting on applications for suspension of operations and production filed under § 3503.3 of this title and terminating such suspensions when conditions warrant. The authorized officer shall, upon request, assist in review of applications for suspension of operations and production on Indian lands which are filed under the provisions of 25 CFR Parts 211 and 212.

(h) Upon receipt of a written request for cessation or abandonment of operations, inspecting the operations and determining whether they are in compliance with established requirements. The authorized officer shall, in accordance with applicable procedures, consult with, or obtain the concurrence of the State or Federal agency having jurisdiction over the lands with respect to the surface protection and reclamation requirements of the lease, license or permit and the exploration or mining plan.

(i) Acting on any mineral trespass on Federal or Indian lands in accordance with Part 9230 of this title. The surface managing agency, if other than the BLM, shall be notified of any mineral trespass and the planned enforcement action.

(j) Implementing General Mining Orders and issuing other orders, making determinations and providing concurrence and approvals as necessary to implement or assure compliance with the regulations in this part. Any verbal orders, approvals or concurrences shall be promptly confirmed in writing.

Subpart 3591—General Obligations of Lessees, Licensees and Permittees

§ 3591.1 General obligations of lessees, licensees and permittees.

(a) Operations for the discovery, testing, development, mining or processing of minerals shall conform to the established requirements.

(b) The surface of lease, license or permit lands shall be reclaimed in accordance with established requirements. Lessees, licensees or permittees shall take such action as may be needed to avoid, minimize or repair:

(1) Waste and damage to mineral-bearing formations;

(2) Soil erosion;

(3) Pollution of the air;

(4) Pollution of surface or ground water;

(5) Damage to vegetation;

(6) Injury to or destruction of fish or wildlife and their habitat;

(7) Creation of unsafe or hazardous conditions;

(8) Damage to improvements; and

(9) Damage to recreation, scenic, historical and ecological values of the lands.

(10) Damage to scientifically significant paleontological and archaeological resources.

(c) All operations conducted under this part shall be consistent with Federal and State water and air quality standards.

(d) Inundations, fires, fatal accidents, accidents threatening damage to the mine, the lands or the deposits, or conditions which could cause water pollution shall be reported promptly to the authorized officer. The notice required by this section shall be in addition to any notice or reports required by 30 CFR Part 56 or 57, or other applicable regulations.

§ 3591.2 Forms and reports.

The operator shall submit production and royalty forms and reports to the Minerals Management Service in accordance with 30 CFR Parts 216 and 218.

Subpart 3592—Plans and Maps

§ 3592.1 Operating plans.

(a) Before conducting any operations under any lease(s), license(s), or permit(s), the operator shall submit to the authorized officer an exploration or mining plan which shall show in detail the proposed exploration, prospecting, testing, development or mining operations to be conducted. Exploration and mining plans shall be consistent with and responsive to the requirements of the lease, license or permit for the protection of nonmineral resources and for the reclamation of the surface of the lands affected by the operations on Federal or Indian lease(s), license(s), or permits. The authorized officer shall consult with any other agency involved, and shall promptly approve the plans or indicate what additional information is necessary to conform to the provisions of the established requirements. No operations shall be conducted except as provided in an approved plan.

(b) The exploration plan shall be submitted in accordance with mineral specific regulations in Group 3500 of this title (See Subparts 3512, 3522, 3532, 3542, 3552 and 3562) and in accordance with 25 CFR 216.6 for Indian lands.

(c) The lessee/operator shall submit 2 copies of the mining plan to the authorized officer for approval. An additional copy shall be submitted if the surface managing agency is other than the BLM. The mining plan shall contain, at a minimum, the following:

(1) Names, addresses and telephone numbers of those responsible for operations to be conducted under the approved plan to whom notices and orders are to be delivered, names and addresses of lessees, Federal lease serial numbers and names and addresses of surface and mineral owners of record, if other than the United States;

(2) A general description of geologic conditions and mineral resources, with appropriate maps, within the area where mining is to be conducted;

(3) A copy of a suitable map or aerial photograph showing the topography, the area covered by the lease(s), the name and location of major topographic and cultural features and the drainage plan away from the affected area;

(4) A statement of proposed methods of operating, including a description of the surface or underground mining methods, the proposed roads, the size and location of structures and facilities to be built, mining sequence, production rate, estimated recovery factors, stripping ratios and number of acres in the Federal or Indian lease(s), license(s), or permit(s) to be affected;

(5) An estimate of the quantity and quality of the mineral resources, proposed cutoff grade and, if applicable, proposed blending procedures for all leases covered by the mining plan;

(6) An explanation of how ultimate maximum recovery of the resource will be achieved for the Federal or Indian lease(s). If a mineral deposit, or portion thereof, is not to be mined or is to be rendered unminable by the operation, the operator/lessee shall submit appropriate justification to the authorized officer for approval;

(7) Appropriate maps and cross sections showing:

(i) Federal or Indian lease boundaries and serial numbers;

(ii) Surface ownership and boundaries;

(iii) Locations of existing and abandoned mines;

(iv) Typical structure cross sections;

(v) Location of shafts or mining entries, strip pits, waste dumps, and surface facilities; and

(vi) Typical mining sequence, with appropriate timeframes;

(8) A narrative which addresses the environmental aspects associated with the proposed mine which includes, at a minimum, the following:

(i) An estimate of the quantity of water to be used and pollutants that may enter any receiving waters;

(ii) A design for the necessary impoundment, treatment or control of all runoff water and drainage from workings to reduce soil erosion and sedimentation and to prevent the pollution of receiving waters;

(iii) A description of measures to be taken to prevent or control fire, soil erosion, subsidence, pollution of surface and ground water, pollution of air, damage to fish or wildlife or other natural resources and hazards to public health and safety; and

(9) A reclamation schedule and the measures to be taken for surface reclamation of the Federal or Indian lease(s), license(s), or permit(s) that will ensure compliance with the established requirements. In those instances in which the lease requires the revegetation of an area affected by operations, the mining plan shall show:

(i) Proposed methods of preparation and fertilizing the soil prior to replanting;

(ii) Types and mixtures of shrubs, trees or tree seedlings, grasses or legumes to be planted; and

(iii) Types and methods of planting, including the amount of grasses or legumes per acre, or the number and spacing of trees or tree seedlings, or combinations of grasses and trees;

(10) The method of abandonment of operations on Federal or Indian lease(s), license(s), and permit(s) proposed to protect the unmined recoverable reserves and other resources, including the method proposed to fill in, fence or close all surface openings which are a hazard to people or animals. Abandonment of operations also is subject to the provisions of Subpart 3505 of this title; and

(11) Any additional information that the authorized officer deems necessary for approval of the plan.

(d)(1) Approved exploration and mining plans may be modified at any time to adjust to changed conditions or to correct an oversight. To obtain approval of an exploration or mining plan modification, the operator/lessee shall submit a written statement of the proposed modification and the justification for such modification. Any proposed exploration or mining plan modification(s) shall not be implemented unless previously approved by the authorized officer.

(2) The authorized officer may require a modification to the approved exploration or mining plan if conditions warrant.

(e) If circumstances warrant, or if development of an exploration or mining plan for the entire operation is dependent upon unknown factors which cannot or will not be determined except during the progress of the operations, a partial plan may be approved and supplemented from time to time. The operator/lessee shall not, however, perform any operation except under an approved plan.

§ 3592.2 Maps of underground workings and surface operations.

Maps of underground workings and surface operations shall be drawn to a scale acceptable to the authorized officer. All maps shall be appropriately marked with reference to Government land marks or lines and elevations with reference to sea level. When required by the authorized officer, vertical projections and cross sections shall accompany plan views. Maps shall be based on accurate surveys and certified by a professional engineer, professional land surveyor or other professionally qualified person. Accurate copies of such maps or reproductive material or prints thereof shall be furnished by the operator to the authorized officer when and as required.

§ 3592.3 Production maps.

(a) The operator shall prepare maps which show mineral production from the leased lands. All excavations in each separate bed or deposit shall be shown in such a manner that the production of minerals for any royalty period can be accurately ascertained. Maps submitted for in situ or solution mining shall show pipelines, meter locations, or other points of measurement necessary for production verification. Production maps shall be submitted to the authorized officer at the end of each royalty reporting period or on a schedule determined by the authorized officer. As appropriate or required by the authorized officer, production maps also shall show surface boundaries, lease boundaries and topography, including subsidence resulting from mining activities.

(b) In the event of failure of the operator to furnish the maps required by this section, the authorized officer shall employ a licensed mine surveyor to make a survey and maps of the mine, and the cost thereof shall be charged to and promptly paid by the operator/lessee.

(c) If the authorized officer believes any map submitted by an operator/lessee is incorrect, the authorized officer may cause a survey to be made, and if the survey shows the map submitted by the operator/lessee to be substantially incorrect in whole or in part, the cost of making the survey and preparing the map shall be charged to and promptly paid by the operator/lessee.

Subpart 3593—Bore Holes and Samples

§ 3593.1 Core or test hole cores, samples, cuttings.

(a) The operator/lessee shall submit promptly to the authorized officer a signed copy of records of all core or test holes made on the lands covered by the lease, license or permit. The records shall be in a form that will allow the position and direction of the holes to be

located on a map. The records shall include a log of all strata penetrated and conditions encountered, such as water, gas or unusual conditions. Copies of analyses of all samples shall be transmitted to the authorized officer as soon as obtained or as requested by the authorized officer. The operator/lessee shall furnish the authorized officer a detailed lithologic log of each drill hole and all other in-hole surveys or other logs produced. The core from test holes shall be retained by the operator/lessee for 1 year or such other period as may be directed by the authorized officer, and shall be available for inspection by the authorized officer. The authorized officer may cut such cores and receive samples as appropriate. Upon the request of the authorized officer, the operator/lessee shall furnish samples of strata, drill cuttings and mill products.

(b) Surface drill holes for development or holes for prospecting shall be abandoned to the satisfaction of the authorized officer by cementing and/or casing or by other methods approved in advance by the authorized officer and in a manner to protect the surface and not endanger any present or future underground operation or any deposit of oil, gas, other mineral substances or aquifer.

(c) Logs and analyses of development holes shall not be required unless specifically requested by the authorized officer. Drill holes may be converted to surveillance wells for the purpose of determining the effect of subsequent operations upon the quantity, quality of pressure of ground water or mine gases. Such conversion may be required by the authorized officer or requested by the operator/lessee and approved by the authorized officer. Prior to the termination of the lease, license or permit term, all surveillance wells shall be reclaimed unless the surface owner assumes responsibility for reclamation of such surveillance wells. The transfer of liability for reclamation shall be approved in writing by the authorized officer.

(d) When drilling on lands with potential for encountering high pressure oil, gas or geothermal formations, drilling equipment shall be equipped with blowout control devices acceptable to the authorized officer.

Subpart 3594—Mining Methods

§ 3594.1 Ultimate maximum recovery.

(a) Mining operations shall be conducted in a manner to yield the ultimate maximum recovery of the mineral deposits, consistent with the protection and use of other natural resources and the protection and preservation of the environment—land, water and air. All shafts, main exits and passageways, as well as overlying beds or mineral deposits that at a future date may be of economic importance, shall be protected by adequate pillars in the deposit being worked or by such other means as approved by the authorized officer.

(b) New geologic information obtained during mining regarding any mineral deposits on the lease shall be fully recorded and a copy of the record furnished to the authorized officer, if requested.

§ 3594.2 Support pillars.

Sufficient pillars shall be left during first mining to ensure the ultimate maximum recovery of mineral deposits prior to abandonment. All boundary pillars shall be 50 feet thick unless otherwise specified in writing by the authorized officer. Boundary and other main pillars shall be mined only with the written consent or by order of the authorized officer.

§ 3594.3 Boundary pillars and isolated blocks.

(a) If the ore on adjacent lands subject to the regulations in this part has been worked out beyond any boundary pillar, if the water level beyond the pillar is below the operator's/lessee's adjacent operations, and if no other hazards exist, the operator/lessee shall, on the written order of the authorized officer, mine out and remove all available ore in such boundary pillar, both in the lands covered by the lease and in the adjoining premises, when the authorized officer determines that such ore can be mined without undue hardship to the operator/lessee.

(b) If the mining rights in adjoining premises are privately owned or controlled, an agreement may be made with the owners of such interests for the extraction of the ore in the boundary pillars.

(c) Narrow strips of ore between leased lands and the outcrop on other lands subject to the regulations in this part and small blocks of ore adjacent to leased lands that would otherwise be isolated or lost may be mined under the provisions of paragraphs (a) and (b) of this section.

§ 3594.4 Development on leased lands through adjoining mines as part of a mining unit.

An operator/lessee may mine a leased tract from an adjoining underground mine on lands privately owned or controlled or from adjacent leased lands, under the following conditions:

(a) The only connections between the mine on lands privately owned or controlled and the mine on leased lands shall be the main haulageways, the ventilationways and the escapeways. Substantial concrete frames and fireproof doors that can be closed in an emergency and opened from either side shall be installed in each such connection. Other connections through the boundary pillars shall not be made until both mines are about to be exhausted and abandoned. The authorized officer may waive any of the requirements of this paragraph when it is determined such waiver will not conflict with the regulations in 30 CFR Part 57 and will promote maximum recovery of the ore.

(b) Free access for inspection of said connecting mine on lands privately owned or controlled shall be given at any reasonable time to the authorized officer.

(c) If an operator/lessee is operating on a lease through a mine on lands privately owned or controlled does not maintain the mine access in accordance with the safety regulations, operations on the leased lands may be stopped by order of the authorized officer.

§ 3594.5 Minerals soluble in water; brines; minerals taken in solution.

(a) In mining or prospecting deposits of sodium, potassium or other minerals soluble in water, all wells, shafts, prospecting holes and other openings shall be adequately protected with cement or other suitable materials against the coursing or entrance of water. The operator/lessee shall, when ordered by the authorized officer, backfill with rock or other suitable material to protect the roof from breakage when there is a danger of the entrance of water.

(b) On leased, license or permit lands containing brines, due precaution shall be exercised to prevent the deposit from becoming diluted or contaminated by the mixture of water or valueless solution.

(c) Where minerals are taken from the earth in solution, such extraction shall not be within 500 feet of the boundary line of lands contained in the approved mine plan without the written permission of the authorized officer.

(d) Any agreement necessary for allocation of brine production shall be made a part of the mine plan.

Subpart 3595—Protection Against Mining Hazards

§ 3595.1 Surface openings.

(a) The operator/lessee shall substantially fill in, fence, protect or close all surface openings, subsidence holes, surface excavations or workings which are a hazard to people or animals. Such protective measures shall be maintained in a secure condition during the term of the lease, license or permit. Before abandonment of operations, all openings, including water discharge points, shall be closed to the satisfaction of the authorized officer.

(b) Reclamation or protection of surface areas no longer needed for operations will commence without delay. The authorized officer shall designate such areas where restoration or protective measures, or both shall be taken.

(c) Wells utilized for operations involving solution mining or brine extraction shall be abandoned in accordance with the approved mine plan.

§ 3595.2 Abandonment of underground workings.

No underground workings or part thereof shall be permanently abandoned and rendered inaccessible without the advance, written approval of the authorized officer.

Subpart 3596—Waste From Mining or Milling

§ 3596.1 Milling.

The operator/lessee shall conduct milling operations in accordance with the established requirements. The operator/lessee shall use due diligence in the reduction, concentration or separation of mineral substances by mechanical or chemical processes or other means so that the percentage of salts, concentrates, or other mineral substances recovered and waste generated shall be in accordance with the approved practices.

§ 3596.2 Disposal of wastes.

The operator/lessee shall dispose of all wastes resulting from the mining, reduction, concentration or separation of mineral substances in accordance with the terms of the lease, approved mining plan, applicable Federal, State and local law and regulations and the directions of the authorized officer.

Subpart 3597—Production Records

§ 3597.1 Books of account.

(a) Operators/lessees shall maintain records which show a correct account of all ore and rock mined, of all ore put through the processing plant, of all mineral products produced and of all ore and mineral products sold. The records shall show all relevant quality analyses of ore minded, processed or sold and the percentage of the mineral products recovered or lost.

(b) Production records shall be made available for examination by the authorized officer during regular business hours. For the purpose of production verification, the authorized office may request, and the operator/lessee shall submit a copy of any portion of the production records not submitted to the Minerals Management Service as part of the operator's/lessee's production reporting.

§ 3597.2 Audits.

(a) An audit of the operator's/lessee's accounts and books may be made or directed by the Minerals Management Service in accordance with the provisions of Title 30 of the Code of Federal Regulations.

(b) An audit of the operator's/lessee's accounts and production records by the service may be requested by the authorized officer if, during the process of verification of production, it is determined that an irregularity exists between reported production and production calculated by the authorized officer. Such audits shall be requested when the irregularity cannot be resolved between the operator/lessee and the authorized officer.

Subpart 3598—Inspection and Enforcement

§ 3598.1 Inspection of underground and surface conditions; surveying, estimating and study.

Operators/lessees shall provide means at all reasonable hours, either day or night, for the authorized officer to inspect or investigate the underground and surface conditions; to conduct surveys; to estimate the amount of ore or other methods of prospecting, exploration, testing, development, processing and handling; to determine the volumes, types, and composition of wastes generated; to determine the adequacy of measures for minimizing the amount of such wastes and the measures for treatment and disposal of such wastes; to determine reclamation procedures and progress; production records; environmental concerns; and to determine whether the operator/lessee is in compliance with established requirements.

§ 3598.2 Issuance of orders.

Orders and notices issued by the authorized officer shall be mailed by certified mail, return receipt requested, to the operator/lessee at the address furnished in the exploration or mining plan. The operator/lessee shall notify the authorized officer of any change of address or operator/lessee name.

§ 3598.3 Service of notices, instructions and orders.

The operator/lessee shall be considered to have received all notices and orders that are mailed by certified mail and a receipt received by the authorized officer. Verbal orders and notices may be given to officials at the mine but shall be confirmed in writing in accordance with § 3598.2 of this title.

§ 3598.4 Enforcement orders.

(a) If the authorized officer determines that an operator/lessee has failed to comply with established requirements, and such noncompliance does not threaten immediate, serious or irreparable damage to the environment, the mine or deposit being mined, or other valuable mineral deposits or other resources, the authorized officer shall serve a notice of noncompliance upon the operator and lessee by delivery in person or by certified mail, return receipt requested. Failure of the operator/lessee to take action in accordance with the notice of noncompliance shall be grounds for the authorized officer to issue an order to cease operations or initiate legal proceedings to cancel the lease under § 3509.4 of this title, or, for Indian leases, recommend to the Bureau of Indian Affairs that action be taken in accordance with 25 CFR Part 211.

(b) A notice of noncompliance shall specify how the operator/lessee has failed to comply with established requirements, and shall specify the action which shall be taken to correct the noncompliance and the time limits within which such action shall be taken. The operator/lessee shall notify the authorized officer when noncompliance items have been corrected.

(c) If, in the judgment of the authorized officer, the failure to comply with the established requirements threatens immediate, serious or irreparable damage to the environment, the mine or the deposit being mined, or other valuable mineral deposits or other resources, the authorized officer may, either in writing or orally with written confirmation, order the cessation of operations without prior notice.

§ 3598.5 Appeals.

Orders or decisions issued under the regulations in this Part may be appealed as provided in Part 4 of this title. Orders issued under § 3598.4(c) of this title shall

be effective during the pendency of any appeal.

[FR Doc. 88-23154 Filed 10-6-88; 8:45 am]
BILLING CODE 4310-64-M

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 916

Approval of Amendments to the Kansas Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Final rule.

SUMMARY: OSMRE is announcing the approval of program amendments submitted by Kansas as modifications to the State's permanent regulatory program (hereinafter referred to as the Kansas program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendments pertain to definitions, permit application requirements, coal exploration, performance standards, and lands unsuitable for surface mining and were submitted to maintain consistency with the Federal requirements.

EFFECTIVE DATE: October 7, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. William J. Kovacic, Director, Kansas City Field Office, Office of Surface Mining Reclamation and Enforcement, 1103 Grand Avenue, Room 502, Kansas City, Missouri 64106; Telephone: (816) 374-6405.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of the Interior approved the Kansas program on January 21, 1981 (46 FR 5892). Information pertinent to the general background and revisions to the permanent program submission, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Kansas program, can be found in the January 21, 1981 Federal Register (46 FR 5892). Subsequent actions concerning proposed amendments are codified at 30 CFR 916.12, 916.15, and 916.16.

II. Submission of Amendments

On January 28, 1988, (Administrative Record No. KS-407) Kansas proposed to amend its program by revising the Kansas Administrative Regulations (K.A.R.) to incorporate by reference certain Federal regulations set out in 30 CFR Parts 701 through 817 as they existed on July 1, 1987. The regulations revised by this amendment are K.A.R. 47-2-75, Definitions; K.A.R. 47-3-42, Application for Mining Permit; K.A.R. 47-7-2, Coal Exploration; K.A.R. 47-9-1, Performance Standards; K.A.R. 47-10-1, Underground Mining; and K.A.R. 47-12-4, Land Unsuitable for Surface Mining.

Kansas proposed these revisions to satisfy the requirements of 30 CFR 916.16 as codified on May 28, 1987 (52 FR 19502). The revisions also respond to a June 9, 1987, letter (Administrative Record No. KS-395) from OSMRE that required Kansas to amend its program to protect historic properties in accordance with the revised Federal regulations promulgated on February 10, 1987 (52 FR 4244).

The Director announced receipt of the proposed amendments in the March 24, 1988, Federal Register (53 FR 9669) and, in the same notice, opened the public comment period and provided an opportunity for a public hearing on their substantive adequacy. No comments were received by April 25, 1988, the close of the comment period. The public hearing scheduled for April 18, 1988, was not held because no one requested an opportunity to testify.

III. Director's Findings

For the reasons discussed below, the Director finds, in accordance with SMCRA and 30 CFR 732.15 and 732.17, that the amendments submitted by Kansas on January 28, 1988, meet the requirements of SMCRA and 30 CFR Chapter VII as they existed on July 1, 1987. However, the Director will require further changes in the future as a result of Federal regulatory revisions promulgated after July 1, 1987.

1. K.A.R. 47-2-75 Definitions

With certain previously approved exceptions, this amendment incorporates by reference 30 CFR 700.5, 701.5, and 705.5 as they were in effect on July 1, 1987. The amendment thus excludes provisions suspended as of that date, including the definitions of "affected area" to the extent that it categorically excludes all public roads with substantial (more than incidental) public use (51 FR 41952, November 20, 1986), "road" (50 FR 7278, February 21, 1985), and "support facilities" (50 FR 28189, July 10, 1985), all in 30 CFR 701.5.

The Kansas action also removes the definition of "adverse physical impact" and incorporates the revised Federal definition of "previously mined area" at 30 CFR 701.5 (52 FR 17526, May 8, 1987), thus meeting the requirements of 30 CFR 916.16(a)(1).

Since the amendment incorporates the same language as the Federal regulations in effect as of July 1, 1987, the Director finds K.A.R. 47-2-75 as revised to be no less stringent than SMCRA and no less effective than the Federal regulations in effect as of that date.

2. K.A.R. 47-3-42 and 47-10-1 Permit Application Requirements

With certain previously approved exceptions, the amendments to K.A.R. 47-3-42(a) (surface mining) and 47-10-1 (underground mining) incorporate by reference 30 CFR 701.11, 773.12, 773.13, 773.15, 773.19, 778.13, 778.14, 778.15, 778.16, 778.17(a), 778.18, 778.21, 778.22, 779.4, 779.11, 779.12, 779.18, 779.19, 779.20, 779.21, 779.22, 779.24, 779.25, 780.11, 780.12, 780.13, 780.14, 780.15, 780.16, 780.18, 780.21, 780.22, 780.23, 780.25, 780.27, 780.29, 780.31, 780.33, 780.35, 780.37, Part 783, Part 784, 785.13, 785.17, 785.18, 785.20, 785.21, and 785.22 as they were in effect on July 1, 1987. The amendment thus excludes provisions suspended as of that date. Suspended regulations include 30 CFR 701.11(e)(1) and (2) insofar as they may be read to retain the regulatory authority's discretion to grant an exemption from reconstruction of existing structures after making the findings of 30 CFR 773.15 (44 FR 67942, November 27, 1979); certain mapping requirements at 30 CFR 783.25(a)(3), (a)(8), and (a)(9) (45 FR 51548, August 4, 1980); 30 CFR 779.21(a) and 783.21(a) to the extent that they require soil surveys for lands that are not prime farmland (45 FR 51548, August 4, 1980); and 30 CFR 780.21(f) and 784.14(e) insofar as they limit the regulatory authority's ability to require an applicant to address life-of-

§ 402.13 Vessels engaged primarily in the bulk trade.

Notwithstanding anything contained in this Tariff, the toll for general or containerized cargo for any vessel documented under the laws of the United States or registered in Canada in accordance with the laws of Canada that has been engaged primarily in the bulk trade exclusively within the St. Lawrence Seaway/Great Lakes system during the three navigation seasons immediately preceding the applicable season, shall be the toll charged for food grains specified in the schedule under the tariff in § 402.8 of this Part.

Issued at Washington, DC on January 14, 1991.

Saint Lawrence Seaway Development Corporation

James L. Emery,

Acting Administrator.

[FR Doc. 91-1189 Filed 1-17-91; 8:45 am]

BILLING CODE 4910-61-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3160

[AA-610-89-4111-02; Circular No. 2613]

RIN 1004-AB21

Onshore Oil and Gas Operations; Federal and Indian Oil and Gas Leases; Onshore Oil and Gas Order No. 2, Drilling Operations; Clarification

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend Onshore Oil and Gas Order No. 2 Drilling Operations to clarify certain well control, casing, mud program, and drilling abandonment requirements, and to specify the circumstances when used casing may be utilized.

DATES: Comments on the proposed rule should be submitted by March 19, 1991. Comments received or postmarked after this date may not be considered in the decisionmaking process on the issuance of a final rule.

ADDRESSES: Comments should be sent to: Director (140) Bureau of Land Management, room 5555, Main Interior Bldg., 1849 C Street, NW, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Robert Kent (202) 653-2174 or Howard A. Lemm (801) 539-4032.

SUPPLEMENTARY INFORMATION: Onshore Oil and Gas Order No. 2 of the Bureau of Land Management on Drilling Operations was published in the **Federal Register** on November 18, 1988 (53 FR 46798). Experience with and further consideration of the Order have shown that certain provisions need to be amended to improve their clarity and workability, and to elaborate on conditions for applying them.

The minimum standards and enforcement provisions for the pressure accumulator system would be amended to make it clear that the fluid reservoir capacity is to be double the usable fluid volume of the accumulator system as opposed to the total volume of the system, in order to clairfy the intent of the Order and accommodate standard reservoir sizes now in use.

The casing requirements would be amended to add the provisos that used casing may be employed only in situations involving shallow depth and low pressures, and that the used casing is required to be at least 87½ percent of the nominal wall thickness of new casing. This will eliminate the safety risk of used casing being used under circumstances posing a substantial risk of casing failure and resulting environmental degradation and loss of resources. The requirements would also be amended to state that centralizers shall be placed on the bottom 3 joints of surface casing rather than on every fourth joint, with a minimum of 1 centralizer per joint, starting with the shoe joint, in order to allow remedial cementing of the upper part of the casing string.

This order would be amended to include a reference to Onshore Oil and Gas Order No. 6—Hydrogen Sulfide Operations, for requirements as to the availability and use of hydrogen sulfide safety and monitoring equipment.

The definition for "Tagging the Plug" when abandoning drilling operations would be amended to remove the requirement that the plug be tagged by placing the weight of the string of tubing or drill pipe, but instead to place a weight on the plug sufficient to show that the plug is in place and properly set. This may be the entire unbuoyed weight of the drill string in many cases, but in some cases due to plug setting depth and compressive strength, excessive weight may cause string fill up and/or plug damage.

The principal author of this proposed rulemaking is Robert Kent of the Division of Fluid Mineral Lease and Regulatory Management, all of the Bureau of Land Management.

It is hereby determined that this proposed rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined under Executive Order 12291 that this document is not a major rule, and under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) that it will not have a significant economic impact on a substantial number of small entities. Additionally, as required by Executive Order 12630, the Department has determined that the rulemaking would not cause a taking of private property.

The information collection requirements contained in 43 CFR part 3160 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance numbers 1004-0134 and 1004-0136.

List of Subjects in 43 CFR Part 3160

Government contracts, Mineral royalties, Oil and gas exploration, Oil and gas production, Public lands—mineral resources, Indian lands—mineral resources, Reporting and recordkeeping requirements.

Under the authorities cited below, part 3160, Group 3100, subchapter C, chapter II of title 43 of the Code of Federal Regulations is proposed to be amended as set forth below.

PART 3160—[AMENDED]

1. The authority citation for part 3160 is revised to read:

Authority: The Mineral Leasing Act as amended and supplemented (30 U.S.C. 181 et seq.), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351-359), the Act of May 21, 1930 (30 U.S.C. 301-306), the Act of March 3, 1909, as amended (25 U.S.C. 396), the Act of May 11, 1938, as amended (25 U.S.C. 396a-396q), the Act of February 28, 1891, as amended (25 U.S.C. 397), the Act of May 29, 1924 (25 U.S.C. 398), the Act of March 3, 1927, (25 U.S.C. 398a-398c), the Act of June 30, 1919, as amended (25 U.S.C. 399), R.S. 441 (43 U.S.C. 1457). See also Attorney General's Opinion of April 2, 1941 (40 Op. Atty. Gen. 41), the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 471 et seq.), the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.), the Act of December 12, 1980 (42 U.S.C. 6508), the Combined Hydrocarbon Leasing Act of 1981 (Pub. L. 97-78), the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 et seq.), and the Indian Mineral Development Act of 1982 (25 U.S.C. 2102 et seq.).

§ 3164.1 [Amended]

2. Section 3164.1(b) is amended by revising the second entry of the table to read as follows:

Order No.	Subject	Effective date	Federal Register reference	Supersedes
2	Drilling operations Amended	December 19, 1988	53 FR 46798	None.

Note.—Numbers will be assigned by the Washington Office, Bureau of Land Management, to additional Orders as they are prepared for publication and added to this table.

Note.—These amendments to the appendix published at 53 FR 46804, Nov. 18, 1988, for information only and will not appear in the Code of Federal Regulations.

Appendix—Text of Oil and Gas Order No. 2 [Amended]

3. Article II.V. is revised to read as follows:

* * * * *

V. Tagging the Plug means running in the hole with a string of tubing or drill pipe and placing sufficient weight on the plug to insure its integrity. Other methods of tagging the plug may be approved by the authorized officer.

4. Article III.A.2.b.ii. is amended by adding the following sentence at the end of the first paragraph thereof:

ii. * * * The configuration of the chokes may vary.

5. Article III.A.2.c. is amended by revising the third sentence of paragraph ii. and the second sentence of paragraph iii. thereof to read as follows, respectively:

ii. * * * The fluid reservoir capacity shall be double the usable fluid volume of the accumulator system capacity and the fluid level shall be maintained at manufacturer's recommendations. * * *

* * * * *

iii. * * * The fluid reservoir capacity shall be double the usable fluid volume of the accumulator system capacity and the fluid level shall be maintained at manufacturer's recommendations. * * *

6. Article III.B.1.a. is amended by adding at the end of the first paragraph thereof and before the paragraph "Violation: Major" the following sentence:

a. * * * Used casing that meets or exceeds API standards for new casing shall only be approved by the authorized officer under circumstances that involve shallow depths and low pressures, and when the wall thickness of the proposed casing is verified to be at least 87½ percent of the nominal wall thickness of new casing.

* * * * *

7. Article III.B.1.f. is amended by revising the first paragraph thereof to read:

f. Surface casing shall have centralizers on the bottom 3 joints of the casing (a minimum of 1 centralizer per joint, starting with the shoe joint). * * *

8. Article III.C.6.b. is revised to read as follows:

b. Hydrogen sulfide safety and monitoring equipment requirements may be found in Onshore Oil and Gas Order No. 6—Hydrogen Sulfide Operations.

Dated: July 31, 1990.

James M. Hughes,

Assistant Secretary of the Interior.

[FR Doc. 91-1274 Filed 1-17-91; 8:45 am]

BILLING CODE 4310-84-M

FEDERAL MARITIME COMMISSION

46 CFR Parts 560 and 572

[Docket No. 91-2]

Electronic Filing of Agreement Reports and Minutes

AGENCY: Federal Maritime Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission proposes to amend its rules regarding filing reports and minutes by agreement parties to permit direct electronic transmission. This proposal is an accommodation to the continuing growth of electronic data interchange and should benefit filers and the Commission.

DATES: Comments due March 15, 1991.

ADDRESSES: Comments (Original and fifteen (15) copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573-0001, (202) 523-5725.

FOR FURTHER INFORMATION CONTACT: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573-0001, (202) 523-5725.

SUPPLEMENTARY INFORMATION: The Commission's rules regarding agreement filings (Parts 560 and 572 of title 46 CFR) contain requirements for filing of various reports including minutes, shipper requests and complaints and indices of documents. The current rules contemplate such filings being made in hard paper copy.

Given the general proliferation of the use of electronic data interchange both at the Commission and in the industry, the Commission is proposing to permit, but not mandate, the filing of such agreement reports and minutes through direct electronic transmission to Commission headquarters. The proposal contemplates modem to modem transfer of ASCII text. The Commission would use an AT class personal computer, 2400 baud modem and FMC-developed communication software which would be compatible with any communications software used by filers. Transmission would be limited to certain hours of Commission business days; *viz.* after 2 p.m. Eastern time, but would be allowed during non-business hours of the Commission. This arrangement should accommodate filing parties located in different time zones and would avoid the need for the Commission to dedicate a terminal full time for this purpose.

The Commission's rules currently provide that certain agreement report filings are to be certified by an agreement official. This requires inclusion of the signature of the certifying official. It is proposed that a Personal Identification Number (PIN) be utilized to satisfy the signature requirement. Parties seeking to use the electronic filing system would submit a statement in advance agreeing that inclusion of the PIN in the transmission constitutes the signature of the certifying official.

It is also contemplated that passwords would be used to prevent unauthorized filings. The password would be unique to each electronic filer. Complete details about the technical aspects of electronic filing would be available from the Commission in the form of a user manual upon finalization of this proposed rule.

A clarification of the requirements for hard copy filings in 46 CFR part 572 is also included in this proposal to reflect the current division of responsibility at the Commission for terminal agreement filings and other agreement filings.

The Federal Maritime Commission has determined that this Proposed Rule is not a "major rule" as defined in Executive Order 12291, dated February 17, 1981, because it will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effect on competition, employment, investment, productivity, innovations, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Federal Maritime Commission certifies, pursuant to section 605(b), of

involved or who may reasonably be expected to become involved in the decisionmaking process on that proceeding, unless the communication, if oral, is made in the presence of all other parties or their representatives, or, if written, is furnished to all other parties. Proceedings include cases pending before the Office, rulemakings amending this Part 4 that might affect a pending case, requests for reconsideration or review by the Director, and any other related action pending before the Office. The terms "interested person" and "person interested in the proceeding" include any individual or other person with an interest in the agency proceeding that is greater than the interest that the public as a whole may have. This regulation does not prohibit communications concerning case status or advice concerning compliance with procedural requirements unless the area of inquiry is in fact an area of controversy in the proceeding. Any oral communication made in violation of this regulation shall be reduced to writing in a memorandum to the file by the person receiving the communication and shall be included in the record. Any written communication made in violation of this regulation shall be included in the record. In proceedings other than informal rulemakings copies of the memorandum or communication shall be provided to all parties, who shall be given an opportunity to respond in writing.

* * * * *

5. A new § 4.31 is added to Subpart B to read as follows:

§ 4.31 Request for limiting disclosure of confidential information.

(a) If any person submitting a document in a proceeding under this part claims that some or all of the information contained in that document is exempt from the mandatory public disclosure requirements of the Freedom of Information Act (5 U.S.C. 552), is information referred to in section 1905 of title 18 of the United States Code (disclosure of confidential information), or is otherwise exempt by law from public disclosure, the person:

(1) Must indicate in the document that it is exempt, or contains information which is exempt, from disclosure;

(2) Must request the presiding officer or appeals board not to disclose such information except to the parties to the proceeding under the conditions provided in paragraphs (b) and (c) of this section, and must serve the request upon the parties to the proceeding. The request shall include the following items:

(i) A copy of the document from which has been deleted the information for which the person requests nondisclosure; if it is not practicable to submit such copy of the document because deletion of the information would render the document unintelligible, a description of the document may be substituted;

(ii) A statement specifying why the information is confidential, if the information for which nondisclosure is requested is claimed to come within the exception in 5 U.S.C. 552(b)(4) for trade secrets and commercial or financial information:

(iii) A statement specifying the justification for nondisclosure, if the information for which nondisclosure is requested is not within the exception in 5 U.S.C. 552(b)(4).

(b) If information is submitted in accordance with paragraph (a) of this section, the information will not be disclosed except as provided in the Freedom of Information Act, in accordance with Part 2 of this title, or upon request from a party to the proceeding under the restrictions stated in paragraph (c) of this section.

(c) At any time, a party may request the presiding officer or appeals board to direct a person submitting information under paragraph (a) of this section to provide that information to the party. The presiding officer or board will so direct, unless paragraph (d) of this section is applicable, if the party requesting the information agrees under oath in writing:

(1) Not to use or disclose the information except in the context of the proceeding conducted pursuant to this part; and

(2) To return all copies of the information at the conclusion of the proceeding to the person submitting the information under paragraph (a) of this section.

(d) If any person submitting a document in a proceeding under this Part other than a hearing conducted pursuant to 5 U.S.C. 554 claims that a disclosure of information in that document to another party to the proceeding is prohibited by law, notwithstanding the protection provided under paragraph (c) of this section, such person:

(1) Must indicate in the original document that it contains information of which disclosure is prohibited;

(2) Must request that the presiding officer or appeals board review such evidence as a basis for its decision without disclosing it to the other party or parties, and serve the request upon the parties to the proceeding. The request shall include a copy of the document or description as required by paragraph (a)(2)(i) of this section and state why disclosure is prohibited, citing pertinent statutory or regulatory authority. If the prohibition on disclosure is intended to protect the interest of a person who is not a party to the proceeding, the party making the request must demonstrate that such person refused to consent to the disclosure of the evidence to other parties to the proceeding.

(3) If the presiding officer or an appeals board denies the request, the person who made the request shall be given an opportunity to withdraw the evidence before it is considered by the presiding official or board unless a Freedom of Information Act request, administrative appeal from the denial of a request, or lawsuit seeking release of the information is pending.

(e) If the person submitting a document does not submit the copy of the document or description required by paragraph (a)(2)(i) or paragraph (d)(2) of this section, the presiding officer or appeals board may assume that there is no objection to public disclosure of the document in its entirety.

(f) Where a decision by a presiding officer or appeals board is based in whole or in part on evidence not included in the public record or disclosed to all parties, the decision shall so state, specifying the nature of the evidence and the provision of law under which disclosure was denied, and the evidence so considered shall be retained under seal as part of the official record.

[FR Doc. 88-28359 Filed 12-8-88; 8:45 am]
BILLING CODE 4310-79-M

Bureau of Land Management

43 CFR Part 3160

[AA-630-87-4111-02; Circular No. 2613]

Onshore Oil and Gas Operations; Federal and Indian Oil and Gas Leases; Onshore Oil and Gas Order No. 2, Drilling Operations; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking; correction.

SUMMARY: The Bureau of Land Management, Department of the Interior, is correcting the final rulemaking adding Onshore Oil and Gas Order No. 2, Drilling Operations, by restoring an inadvertent omission from the Order published in the **Federal Register** on November 18, 1988 (53 FR 46798).

FOR FURTHER INFORMATION CONTACT: Robert Kent at (202) 653–2174.

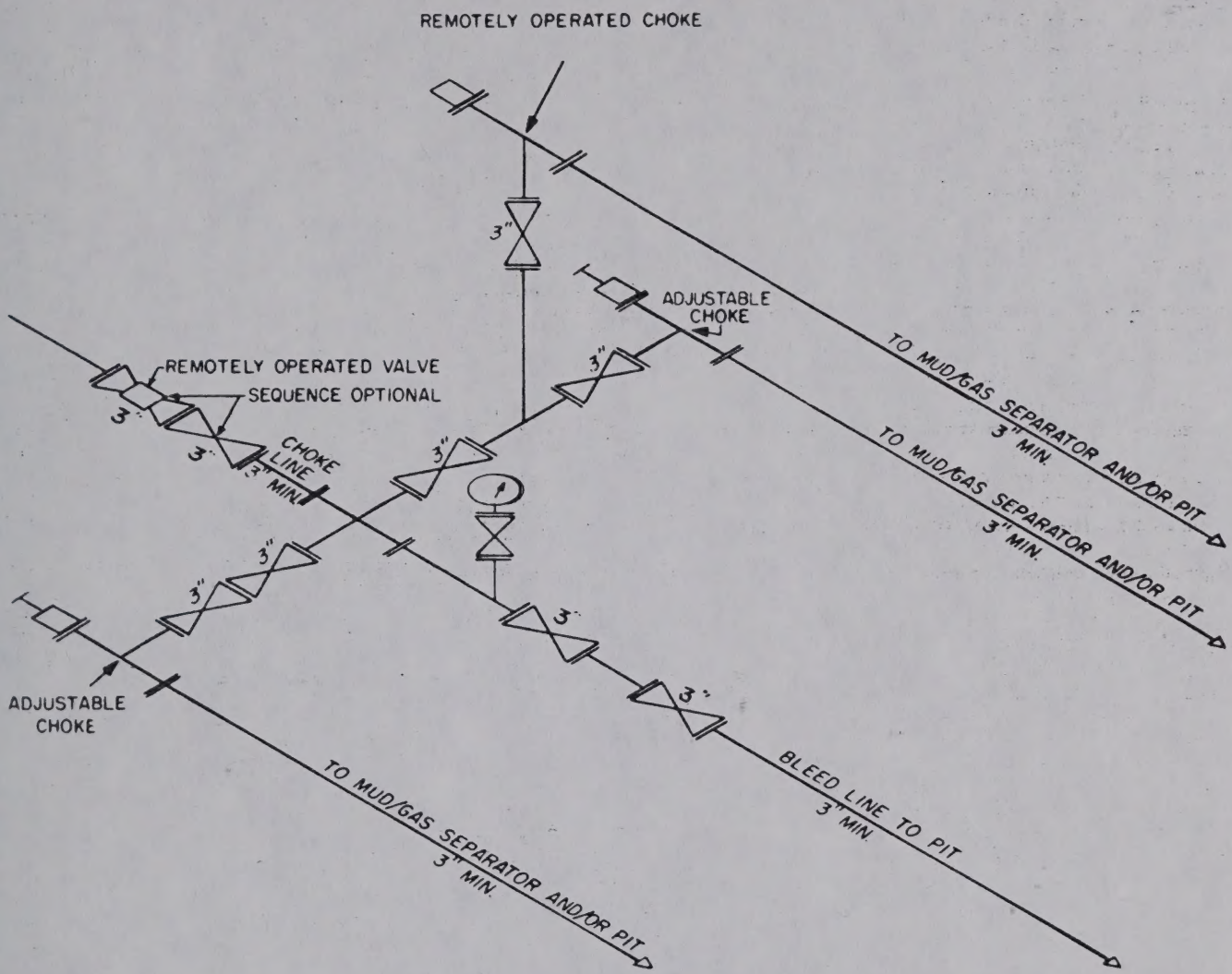
The following correction is made in the final rulemaking amending 43 CFR Part 3160 published in the **Federal Register** on November 18, 1988 (53 FR 46798).

1. The following diagram is added immediately following the title of diagram 5M on page 46813 and preceding the paragraph beginning "Although not required * * *."

Eleanor R. Schwartz,

Federal Register Liaison Officer.

BILLING CODE 4310–84–M



10M AND 15M CHOKE MANIFOLD EQUIPMENT — CONFIGURATION MAY VARY

[FR Doc. 88-28367 Filed 12-8-88; 8:45 am]
BILLING CODE 4310-84-C

Pat

federal register

Friday
November 18, 1988

Part V

Department of the Interior

Bureau of Land Management

43 CFR Part 3160

Onshore Oil and Gas Operations; Federal and Indian Oil and Gas Leases; Drilling Operations; Final Rule

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3160

[AA-630-87-4111-02; Circular No. 2813]

Onshore Oil and Gas Operations; Federal and Indian Oil and Gas Leases; Onshore Oil and Gas Order No. 2, Drilling Operations

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking provides for the issuance of Onshore Oil and Gas Order No. 2 under the provisions of 43 CFR Subpart 3164. This order implements and supplements the requirements found in 43 CFR Subpart 3160 as they apply to drilling operations, specifically, those requirements found at §§ 3162.3-1, 3162.3-4, 3162.4-1, 3162.4-2, 3162.5-1, 3162.5-2, and 3162.5-3. This Order addresses the Bureau of Land Management's uniform national standards for the minimum levels of performance expected from lessees and operators when conducting drilling operations on Federal and Indian (except Osage Tribe) lands. The Order also details enforcement actions and prescribes the manner in which variances may be obtained from specific standards. The Bureau's specific existing internal guidelines on the subject of drilling operations have never been published formally in a Notice to Lessees and Operators, so that this Order has no direct predecessor.

EFFECTIVE DATE: December 19, 1988.

ADDRESS: Inquiries or suggestions should be sent to: Director (610), Bureau of Land Management, Room 601, Premier Building, 1800 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Howard A. Lemm, (801) 524-3000 or Robert Kent, (202) 653-2174.

SUPPLEMENTARY INFORMATION: Section 3164.1 of 43 CFR Part 3160 provides for the issuance of Onshore Oil and Gas Orders when needed to implement and supplement the regulations in that part. All Orders are promulgated through the rulemaking process and, when issued in final form, apply on a nationwide basis. This final rulemaking contains such an Order, No. 2, Drilling Operations.

This Order establishes specific and detailed requirements along with minimum standards covering well control during drilling, casing and cementing, drilling mud and the circulating system, drill stem testing, special drilling operations, related surface use, and the abandonment of drilling operations. These operation standards will be used in conjunction with the broad requirements of Part 3160 and Onshore Oil and Gas Order No. 1. This Order also classifies all violations as minor or major. In addition, the Order establishes the process for initially classifying a violation as minor and reissuing the violation as major if not corrected and continued drilling has increased the adverse impact.

This Order sets standards designed to be minimums for drilling operations at specific pressures under differing conditions and in different parts of the country. It is recognized that, under some conditions, additional requirements will be routinely imposed, or general variances to specific requirements will be granted, either in approval documents or on a field basis. In some instances, the Order relies on existing standards prepared by the American Petroleum Institute, the Occupational Safety and Health Administration, the Texas Railroad Commission, and other agencies. These standards are generally accepted in the oil and gas industry.

The proposed rulemaking for this Onshore Oil and Gas Order No. 2 was published in the Federal Register on August 13, 1987 (52 FR 30310). The comment period ended on October 13, 1987. A total of 36 comments were received: 24 from business entities, 8 from offices of Federal agencies, 2 from trade associations, 1 from an Indian tribe, and 1 from an individual. The comments are discussed in the appropriate portions of this preamble where the provisions of the Order they relate to are discussed.

Discussion of II Definitions

The proposed Order defined the term "freeboard". This term has been removed from the final rulemaking because the only reference to it was in the provision on minimum standards for surface use, which has also been removed from the final rulemaking as explained elsewhere in this preamble.

The term "function test" has been changed to "functionally operated" for clarification. At the suggestion of a comment, the word "wellbore" has been added to describe the type of pressures under discussion.

The term "H$_2$S trim" was removed in the final rulemaking since the final rulemaking now contains no reference to this term.

Several comments suggested changes to the term and definition for "High Pressure Zone" to include low pressure or lost circulation zones. This term has been replaced throughout the Order by "Abnormal Pressure Zone", which refers to low pressure as well as high pressure, and the definition modified to reflect this distinction.

The term "fresh water" has been removed from the Definitions and replaced by the term "usable water" wherever it occurred in the text. This Order requires the protection of usable water, which includes fresh water. The standard for "usable water" of 10,000 ppm. of total dissolved solids is based on the regulatory definition by the Environmental Protection Agency of "drinking water" at 40 CFR 144.3.

A new definition for the term "lessee" is incorporated in this final rulemaking to reflect a change in definition of the term in 43 CFR Part 3160 since the Draft Order was published for comment.

Several comments on the definition of "mud for plugging purposes" suggested that it too restrictive. By using this term, the proposed Order did not intend to exclude the use of other materials. Therefore, the final rulemaking has adopted these comments and the definition has been expanded to include other materials. Consultation with the authorized officer is encouraged to determine the need for mud for plugging purposes to assure that usage is consistent with environmental concerns and established operating practices.

The term "neat cement" does not appear in the final rulemaking, and the term has been removed from the definitions.

The definition for "tagging the plug" has been modified at the suggestion of comments to remove the reference to an amount of weight not to be exceeded when placing the weight of the drill pipe on the plug. This modification was made because no real purpose was served by placing a maximum on the amount of weight placed on the plug.

At the suggestion of a comment, the definition for "targeted tee or turn" has been modified slightly for increased clarity.

The definition of "test plug" is also amended for clarity.

The term "exploratory well" has been redefined to improve the description of what constitutes an exploratory (wildcat) well.

Seven additional terms have been added to the Definitions section in this final rulemaking in response to comments received. The definition chosen for each of these terms was either as defined by a referenced regulation or, when this was not the case, generally by the most commonly used definition incorporating oil field vernacular.

Discussion of III Requirements

A comment was received requesting clarification of the introductory portion of each "Requirement" section and the specific minimum standards that are then listed below each of these requirement sections. The purpose of the Requirements section is to provide direction as to what is to be included in the Application for Permit to Drill (APD), as well as to provide general direction as to the applicability of the minimum standards that follow each of these sections. Neither the Requirements sections nor the Minimum Standards sections are intended to stand alone. However, each section has been reviewed, and clarification added as appropriate.

A. Well Control Requirements

This portion of the rulemaking contains perhaps the most detailed and technical section of the Onshore Order for Drilling Operations. The principal reason for this is the need to establish minimum standards by pressure rating the equipment being utilized. Therefore, even though there is duplication in some of the minimum standards as they uniformly apply to 2M, 3M, 5M, and 10M and 15M systems, substantial differences in usage of equipment require each pressure rating to be listed separately.

A comment requested a definition of the term "operational" used in section III A.1. A definition for this term has been included in the final rulemaking in the Definitions section.

Other comments were received on this same section (III.A.1.) concerning the criteria for establishing the pressure rating of the well control equipment to be used. In the draft order these criteria were established "assuming no fluid (except gas) in the hole". The oil industry comments received on this section were critical of the criteria as being too restrictive and suggestive of a worst-case scenario. While a worst-case scenario represents a legitimate method, used by a number of regulatory agencies and energy companies in developing their design criteria for well control, a compromise has been adopted in the final rulemaking because assuming a totally evacuated hole (except gas) is too extreme to use for establishing minimum standards.

The compromise wording adopted assumes a "partially evacuated hole with a pressure gradient of 0.22 psi/ft." as the criteria for system design. This adopted pressure gradient parameter assumes a partially evacuated hole whereby the hydrostatic pressure gradient is approximately double that assumed in the draft order. It also represents approximately one-half the hydrostatic pressure of a column of water. In addition to being an easily remembered specification, it also represents an appropriate compromise and a legitimate minimum design criterion.

A comment was received concerning section III.A.2. suggesting that the Order should establish well control training provisions. Although this concept has merit, well control training for operators is not within the identified scope of this rulemaking and accordingly is not addressed here. However, this comment has been referred to appropriate BLM personnel for separate consideration.

Minimum standard III.A.i. has been editorially modified for clarity by adding the words "well control" in describing the device required as suggested in the comments received.

The minimum standard III.A.ii. for 2M systems has been modified as suggested in comments to clarify that an "annular preventer, double ram or two rams with one being a blind and one being a pipe ram," is required. This was the intention of the minimum standard contained in the draft Order, but as written could have been understood to require 4 rams, with 1 being a double, and including a blind and a pipe ram as well.

The minimum standard for III.A.iii. received several comments. Some of these noted that 3M systems are the ones most commonly available in some regions. Their use, it was noted, was predicted on availability rather than necessity. Compliance with the provisions of this Order is considered a minimum requirement. As stated in I.D.1., higher rated equipment may be used to meet and maintain these standards without being held to the higher standards normally applied to such equipment. Therefore, if the pressure expected is in the 2M category, the operator should state this in the application. The use of equipment of a higher pressure rating than that approved does not subject the operator to the specifications for the higher pressure rated equipment. Operators are reminded to base requests or equipment approval on this understanding. Since I.D.1. clearly addresses the above mentioned concerns, no further explanation or modification was deemed necessary in the text of the final rulemaking. It should be noted that if drilling were to occur in an area where a 2M system was appropriate and approved, the use of a 3M system without, for example, an annular preventer (which is not required in a 2M system) is, of course, fully acceptable. Accordingly, along with the more liberal assumption of a .22 psi/ft fluid in the hole rather than fully evacuated, as explained earlier, the standard is now appropriate without further modification and as such is consistent with API RP53.

Another comment on this section addressed the draft minimum standard for a drilling spool with side outlet connections. The comment stated that this was too restrictive because the blowout preventer (BOP) itself could have side outlets and functions in the same manner as the drilling spool. The final rulemaking has been modified to allow for this type of equipment and usage not only for a 3M system but for higher rated pressure systems as well.

The minimum standard in the final rulemaking for 2 kill line valves was modified from the draft as suggested by a comment to permit one of the two valves to be a check valve to clarify the intent of the Order.

The minimum standard for safety valves and subs was modified as suggested by comments to clarify intent and now reads "safety valve and subs to fit all drill string connections in use". This has been modified similarly in the requirements for higher rated systems as well.

The term "BOPE" was added to the minimum standard for clarification. It now reads, "All BOPE connections subject to well pressure shall be flanged, welded, or clamped." Connections not subjected to well pressure in the cellar, for example, or those connections upstream from check valves, etc., could be hammer unions as some comments suggested. The minimum standard addresses only those connections directly subject to well pressure conditions. This same modification has been made to the minimum standards for higher rated systems.

The minimum standards for 5M systems in section III.A.iv. generated numerous comments, many of which addressed similar items and nearly all of which suggested minor changes for clarity. As noted below, these changes were for the most part incorporated in this final rulemaking.

The second item in the minimum standards for 5M systems has been completely reworded at the suggestion of comments and broken into 2 separate standards to improve clarity and expound the original intent concerning the appropriate usage of a second pipe ram.

The use of remote kill line on a 5M system received several conflicting comments. This minimum standard is retained as proposed, because it reflects an appropriate and necessary minimum standard.

[illegible]ments were received suggesting [illegible]e minimum standard in the draft [illegible]ng an inside BOP or float sub was not appropriate and did not represent a true minimum standard. The requirement has not been removed, because having an inside BOP or float sub on site that will fit the drill string is standard procedure and necessary to prevent blowouts. However, this standard has been amended to apply specifically to drill string connections in use rather than the entire string.

The minimum standards for 10M and 15M systems in section III.A.2.a.v. received general comments expressing satisfaction with all the specified standards as being appropriate and necessary given the high relative pressures under consideration. However, other useful comments were received as discussed below which addressed issues that warranted further consideration.

The minimum standard for a rotating head if conditions warrant as required in the draft Order was removed since it was not stated as a true minimum standard. The authorized officer at the time the APD is approved always has the discretionary authority to require additional equipment if conditions [illegible]nt.

[illegible] comments addressed the [illegible]m standard that requires "3 [illegible]s, 1 being remotely controlled." This standard remains as stated in the draft Order since this requirement is well-accepted operating practice and represents an appropriate minimum standard.

The requirement for a wear ring received several comments. These ranged from the belief that a wear ring is appropriate for all pressure systems to the belief that a wear ring is inappropriate for any system. The minimum standard for a wear ring on 10M and 15M systems has been retained in the final rulemaking in realization that detecting significant wear particularly in these higher rated systems is directly related to responsible well control equipment requirements.

The minimum standard in paragraph III.A.2.a.vii. attracted 1 comment suggesting different wording to recognize the existence of alternative measures that would satisfy the intent of the standard. This minimum standard has been modified to accommodate this request.

The minimum standard in paragraph III.A.2.b.i. generated several comments, [illegible]f which suggested that the choke [illegible]hould be anchored. This [illegible]rement has been included in the final rulemaking. This minimum standard also received comment concerning the requirement that the lines be straight unless turns use tee blocks or are targeted with running tees. This part of the minimum standard was not further modified since it represents an appropriate minimum standard consistent with established operating practice. Operators are reminded that if an instance occurs whereby a legitimate exception to this practice is necessary a variance can be requested as explained elsewhere in this Order.

Several comments were received concerning paragraph III.A.2.b.ii., which relates to the choke manifold equipment configurations. This standard was modified for clarity to improve the original intended meaning. Several valves as shown on the drawing have been removed or their size reduced as suggested in comments since they did not serve an operational purpose and, therefore, were not true minimum standards. Another comment on the choke manifold system urged that wording should be incorporated to state that the system should be kept from freezing. Since the Order requires that all equipment shall be "operational", which includes keeping components from freezing or from being affected by any other factors that would render them non-operational, no greater specificity in this regard is necessary.

As requested in comments, the requirements of this subpart have been clarified by the addition of minimum standards III.A.2.b.iii. and III.A.2.b.iv. These paragraphs more clearly specify the intent of the Order relating to unrestricted flow for valve lines, and the design for pressure gauges.

The pressure accumulator system minimum standards for 3M systems in section III.A.2.c.ii. attracted several general and somewhat divergent comments. No consensus or necessity for modification was expressed, and the final rulemaking in this section remains unchanged.

The minimum standards for 5M accumulator systems in section III.A.2.c.iii. received several comments stating that, as worded, the standards were excessive. The compromise wording adopted attempts to address the concerns of the comments. However, the 50 percent safety factor for 3 ram systems is retained after a review of manufacturers' recommendations as well as industry recommended practices since 5M and higher pressure rated systems typically require more stored volume due to higher BOP stacks, more piping length, etc.

Paragraph III.A.2.f. was amended to reflect suggestions in several comments offering improved language to clarify the minimum standard for accumulator pump capacity in accordance with conventional use. Under the revised minimum standard, the accumulator system is to be isolated rather than removed from service for testing the pump. Furthermore, the pumps are required to be capable of obtaining a minimum of 200 psi pressure above the specified accumulator precharge pressure. This change reflects a recognition that the 1200 psi standard in the proposed Order unduly restricted use of lower pressure accumulator systems.

Paragraph III.A.2.g. has been modified to specify how the valve position is to be maintained, as requested in several comments.

Paragraph III.A.2.h. generated several comments requesting modified language. A statement has been added to clarify the intent that remote controls are not required for 2M systems. The requirement for remote controls for 3M systems remains in place. Again, operators are reminded that if a 2M system is adequate under the requirements of this Order, and the use of a 3M system is being used only because of its availability, this should be noted at the time of approval and the request for approval should reflect equipment specified to handle 2M pressure situations. Only the specifications necessary for 2M systems would be enforced.

The minimum standard for well control equipment testing, III.A.2.i.i., received a comment on acceptable test fluids. Clear water or an appropriate clear liquid for subfreezing temperatures with a viscosity similar to water is required by this final rulemaking. Use of a drilling fluid rather than a clear liquid could mask and/or seal small leaks and, therefore, such use is not considered an appropriate practice or minimum standard, and the rulemaking has been amended to specify liquid rather than fluid.

The next provision providing minimum standards and enforcement provisions for well control equipment testing, in section III.A.2.i.ii., received comments that expressed concern as to the period of time to maintain the pressure test. This minimum standard has been amended to effect a compromise between the draft Order and the varying comments received. The final rulemaking specifies that the test shall be maintained for "10 minutes or until the provisions of the test are met, whichever is greater" instead of the 15-minute test period specified in the draft Order. Utilization of a test plug is addressed in the final rulemaking along

with accompanying provisions for its pressure testing.

The length of test specified in III.A.2.i.iii. was similarly modified to "10 minutes or until provisions of the test are met".

Language in III.A.2.i.iv.B. is amended to make it clear that the test is to be performed when any seal subject to test pressure is broken.

Minimum standard III.A.2.i.vii is amended to require that the annular preventer shall be functionally operated at least weekly in order to determine whether the equipment is in working order without subjecting it to well bore pressures. This requirement would not significantly damage or cause premature wear of the rubber element.

The minimum standard III.A.2.i.ix. was amended for clarity to include the words "pit level" in describing the blowout prevention equipment (BOPE) drill to be conducted as suggested in a comment. This clarification refers to an exercise to be performed by the rig crew in response to a simulation of a gain in the mud pit level that would indicate an entry of fluid in the well bore.

B. Casing and Cementing Requirements

Many comments were received concerning the provisions for casing and cementing. Although the philosophy of what constitutes good minimum standards varied somewhat throughout these comments, those comments that provided alternative language to accomplish the perceived intent of the drafted standards were especially useful. The efforts of those commentators are especially appreciated in resolving and arriving at the appropriate minimum standards herein incorporated.

Numerous changes in the introductory language that precedes the minimum standards have been made as the result of comments. The draft order inconsistently referred to fresh water zones and to usable water zones needing protection. References to fresh water zones have been replaced with the term "usable water zones" throughout this final rulemaking for consistency and for regulatory compliance since usable water zones, which include fresh water zones, are also required to be protected.

Comments also suggested alternatives to the term "leasable mineral deposits." This term has been replaced as suggested by the term "valuable deposit of minerals" and is redefined as indicated in the definitions.

The criterion for casing setting depth has been revised. The draft criterion attracted more comments than any other single item in the proposed rulemaking. This requirement as it appears in the final rulemaking is consistent with accepted standard field operating practice and establishes the standard for design assuming normal drilling operations and conditions. In this context, the casing would not have to be designed to anticipate a completely unloaded situation down-hole.

The minimum design factors for tension, collapse, and burst have been removed in this final rulemaking, because of the great variations in calculation methods within industry among companies and from region to region. However, the operator will be required to submit the design factors that were utilized in his design for all exploratory wells and/or other wells as specified by the authorized officer.

The casing design factors for formation pressure gradients and fracture gradients attracted several comments. However, since both items occur with a statement "lacking better data", there was a consensus that these criteria are appropriate.

The minimum clearance provision for a hole/casing annulus received considerable comment. The necessity for an acceptable clearance was widely recognized, yet concern was expressed because of drill bit and casing size availability considerations. Several comments included excellent data on commonly accepted hole/casing annulus clearances that are in part derived from drill bit and casing size availability. The most common example cited was the use of 7 inch casing in an 8 1/2 inch hole. This calculates to a 0.422 inch clearance on all sides, which, according to both the comments and further research within BLM, is the "smallest" prudent clearance necessary to provide adequate isolation. Therefore, the final rulemaking establishes 0.422 inch clearance on all sides as the minimum design criterion, replacing 0.500 inch. Some comments strongly suggested that as much as 1 inch on all sides may be necessary, but the final rulemaking establishes a practicable minimum standard. It is recognized that there could be exceptions in unique circumstances when the operator or the authorized officer may wish to vary this requirement. These rare exceptions can be dealt with by requesting or requiring a variance as explained elsewhere in this Order. It should be realized that, as with any minimum standard or requirement, the authorized officer may require an increased clearance depending on field conditions. For example, depending on circumstances, the authorized representative may require additional clearance for surface casing strings.

The "waiting on cement" time requirement drew several comments that differed widely as to the suggested appropriate times. This requirement has been amended to indicate that the time must be adequate to achieve a minimum of 500 psi compressive strength at the casing shoe prior to drilling out. This change was at the suggestion of comments received and represents the generally accepted field operating practice.

The minimum standard for casing in Item III.B.1.a. has been amended as suggested in comments to improve clarity and provide for consistency with similar regulatory standards. The standard is strengthened by requiring testing and by requiring reconditioned casing to meet or exceed API standards for new casing.

The minimum standard for liners in paragraph III.B.1.b. attracted comments suggesting the overlap should be as much as 300 feet or as little as 50 feet. Maintaining the minimum standard at 100 feet of overlap was deemed the most appropriate to combine most beneficially safety and economy. Operators are free to exceed this minimum standard.

An additional comment on this section suggested language making it clear when a pressure test for liners should be performed, and setting the standards for such a test. This suggestion has been adopted in the final rulemaking.

At the request of comments, minimum standard III.B.1.e. has been amended to specify that the required report is to be made before running the next string of casing or before requesting plugging orders, whichever occurs first.

The minimum standard in paragraph III.B.1.f. received comments both on the standard for placement of centralizers and on the standard for determining the corrective action. These comments have been adopted. The standards have been amended to improve the likelihood of there being an adequate cement bond.

Minimum standard III.B.1.g. for use of top and bottom plugs was amended to improve clarity and to set forth acceptable alternatives for isolating the cement from contamination.

Minimum standard III.B.1.h. on pressure testing casing strings has been rephrased as suggested by comments in order to clarify the intent as well as the technical reasoning. As published in the proposed rulemaking, the standard for pressure testing—1 psi per foot of casing length—was an error, and the final Order returns to the standard that has been employed historically.

[redacted]mment was received [redacted]g alternative wording to make [redacted]m standard III.B.1.i. on testing the pressure integrity of each casing shoe more flexible to meet varying pressure situations at different depths and in different formations. Recognizing that the well may not require a 5M system until it reaches greater depth, the suggested wording has been adopted. The final Order relaxes the requirement for portions of wells—generally the upper portions—that may not require a 5M system.

C. Mud Program Requirements

One comment was received asking that the term "mudding up" be defined. The final rulemaking includes a definition of this term.

In response to comments, the last sentence of the requirement statement for this section was modified by replacing "and" with "or" in recognition that being relatively near a premix bulk mud supply is a sufficient and acceptable alternative to maintaining sufficient quantities of mud materials on site.

For clarity and at the suggestion of a comment, the word "equipment" has b[redacted] added to the term "visual mud-[redacted]ing" in minimum standard [redacted]um standard III.C.3. of the mud program requirements has been modified as suggested by several comments to require having mud monitoring equipment in place on all systems only when abnormal pressures are anticipated by the operator. A definition of "abnormal pressure" has been added in the definitions section to clarify when the operator is required to have monitoring equipment in place. In exploration areas, applications for permit to drill (APD) will be approved only if they call for monitoring equipment to be in place, because in such situations there can be little or no basis for anticipating normal pressures.

A change in the proposed Order at paragraph III.C.4. on testing for viscosity, density, and gel strength was made in response to comments stating that the Order should specify when it is necessary to begin requiring mud tests. This has been done in the final rulemaking by specifying that after mudding up, the tests should occur every 24 hours.

Several comments were received objecting to the minimum standard III.C.5. on the use of trip tanks. The r[redacted]ment only applies to 10M, 15M, [redacted]aded 5M systems. Systems in [redacted]n pressure situations are unique by their nature and require special equipment to aid in the detection of kicks. This standard therefore remains unchanged, except that the authorized officer is given discretion, for 5M systems, to require a trip tank if conditions warrant.

Minimum standard III.C.6. on gas detection equipment has been completely rewritten, at the suggestion of one comment, to add a provision for monitoring other hydrocarbon gases, such as methane, as well as hydrogen sulfide. An editorial change was also made to correct the H_2S concentration listed from 100 ppm to 20 ppm.

The language of standard III.C.7. on flare systems has been changed to improve clarity by specifying that flare lines shall be positioned in the prevailing downwind direction from the gas source. In addition, the flare line discharge distance has been changed from 150 feet to 100 feet for consistency with proposed Order 6, which is in preparation, and with standards set by the Occupational Safety and Health Administration.

Standard III.C.8. has been amended to require the installation of a mud-gas separator (gasbuster) as specified at least 500 feet above the anticipated hydrocarbon zone instead of 1,000 feet as stated in the proposed rulemaking, and only for systems of 10M or greater, or those where abnormal pressures are anticipated even if the system is not 10M, rather than for all 5M or greater systems as provided in the proposed rulemaking. Several comments requested this change, which will also be consistent with the proposed Order 6 on H_2S Operations. This approach is more reasonable and flexible. The standard applies only in those discrete areas where separators are most likely to be needed. Additionally, the violation in the final rulemaking is classified as "minor" in recognition that the correction could readily be made before encountering the anticipated hydrocarbon zone.

D. Drill Stem Testing Requirements

A number of comments addressed the proposed prohibition of initiating drill stem testing (DST) outside of daylight hours. This provision has been modified to allow the authorized officer a degree of flexibility in approving DST in recognition that in the northern latitudes and during the winter months, initiation of a DST in daylight may not be practicable. Special safety requirements may be imposed by the authorized officer in those instances. Also, closed chamber DST may be accomplished day or night and provision for this has been added as suggested in comments and to clarify the original intention of the draft.

Standards III.D.1. and D.2. were editorially amended for clarity as suggested in comments.

Standard III.D.3. on the location of combustion engines has been amended to make it consistent with the OSHA requirement that they be located no closer than 100 feet from the well bore, unless equipped with arresters and/or water cooled exhaust manifolds.

E. Special Drilling Operations

Numerous comments were received concerning this section. Many of these addressed the minimum distances specified. In response to these comments, all distances have been standardized and reduced to 100 feet. For example, the length of the blooie line, required to be 150 feet from the well bore in the proposed rulemaking, is now 100 feet. In all cases, the distances specified in this final rulemaking pertaining to Special Drilling Operations are consistent with similar requirements of OSHA.

Another comment suggested modifying the minimum standard concerning the straight run on the blooie line. This has been modified by the addition of the words "unless otherwise approved" because there may be instances where a straight run may not be feasible.

One comment suggested removal of the minimum standard requiring deduster equipment during air/gas drilling. This comment was not adopted due to the potentially serious environmental consequences. If an operator has a special situation and can justify not using deduster equipment, he can request a variance of the authorized representative as detailed elsewhere in this Order.

As suggested in a comment, the minimum standard for containment of cuttings and the circulating medium has been amended to specify the required mode of containment.

Several comments dealt with the draft minimum standard requiring an automatic igniter and a continuous pilot light on the blooie line. This standard has been modified to provide that either of these methods is acceptable rather than both being required. Under certain circumstances the authorized officer may require both in approving a particular APD if redundancy is desirable; however, it is not necessary to require both as a minimum standard.

At the suggestion of several comments, the minimum standard concerning mud mixing equipment, mixing water, etc., was rewording for clarity.

F. Surface Use

Comments from within government and from industry were received concerning the minimum standards portion of the Surface Use Requirements. These comments did not particularly object to the stated minimum standard in the draft, but argued that this Order is not the appropriate place to outline specific surface standards. Several comments suggested that a revision of Onshore Order No. 1 would be more appropriate. BLM has scheduled such a revision to Onshore Order No. 1. In addition, under the Federal Onshore Oil and Gas Leasing Reform Act of 1987, management of surface use on National Forest lands is required to be coordinated with the Forest Service. In response to the comments, the minimum standards portion of the Surface Use Requirements has been modified in this final rulemaking to contain a general standard to comply with the approved APD rather than specific standards.

G. Drilling Abandonment Requirements

Comments received on the drilling abandonment section of this Order are discussed below as they address specific provisions.

Two comments suggested amendment of the provision on types of mineral deposits requiring protection. The term "prospectively valuable deposit of minerals" has been added in the introductory paragraph of this section and to the definitions section of the Order to clarify an unnecessarily vague reference to "other minerals".

Another comment requested that the deadline for following up in writing an oral request for abandonment be increased from 5 business days to 10. This comment has not been adopted because an operator can ask for an extension if additional time is needed.

The minimum standard in paragraph III.G.1.i.a. on migrating fluids was modified as suggested in comments to make it clear that gases as well as liquids are considered fluids with a potential to migrate, and that formations containing them shall be cemented across in the prescribed manner. Another comment on this section wanted the term "fluid" to be defined as fresh water or hydrocarbon. This suggestion was rejected as being too restrictive. For example, salt water or nitrogen gas zones require cementing across so that contamination of other zones by migration does not occur.

The requirement in the draft Onshore Order specifying protection of lost circulation zones during plugging has been removed at the suggestion of comments. However, as stated elsewhere in the Drilling Abandonment Requirements, the hole must be in a static condition at the time any plugs are placed, or the placement of additional plugs and/or cement may be required. Therefore, to assure a static well bore condition, lost circulation zones must be stabilized or isolated in some manner before further plugging can occur higher up in the hole.

The minimum standard in paragraph III.G.1.i.b. was modified as explained earlier in this section to clarify the types of minerals needing protection.

The minimum standard in paragraph III.G.1.ii. attracted comments questioning the reasoning behind the requirement of an additional 10 percent of slurry for each 1,000 feet of depth. This factor is included to compensate for mud contamination (and not as a washout factor as supposed in some comments) in pumping the plug to the required depth. For a 100 foot plug located at 10,000 feet, this would amount to an additional 100 feet of cement column. Similar comments were received concerning this requirement as it applies to cased holes. Since the logic for requiring this additional slurry is the same, those comments are not addressed further in this section.

The minimum standard in paragraph III.G.1.iv. was modified as suggested by comments to make it clear that it pertains to thick sections of a single formation. Another comment on this section preferred that extremely thick sections be defined as being 400 feet in thickness. This suggestion was not adopted because there are too many variables to select a particular number as "extremely thick". The authorized officer and the operator requesting plugging instructions need flexibility in determining whether a portion of a formation is extremely thick.

The minimum standard in paragraph III.G.1.v. on plugging open holes was modified in this final rulemaking as suggested by a comment to recognize that plugs shall be placed across in-gauge sections of the hole every 3,000 feet, unless otherwise approved by the authorized officer. This change will enable the authorized officer the flexibility to modify this requirement on a case-by-case basis.

Two comments addressed the minimum standard in paragraph III.G.2.iii., the amount of cement needed to cap a bridge plug when a bailer is used. The comments suggested 20 feet instead of the proposed 35 feet. The comments were rejected because a lesser amount is not considered adequate. This recognizes a policy based on Bureau of Land Management experience, requiring 35 feet, that has been in place for many years. The requirement of 35 feet is already less than the 50 feet of plug required to cap the bridge plug when not using a bailer.

Paragraph III.G.5. was amended because of a typographical error to require that at least the top 50 feet (instead of 100 feet) of the annulus shall be plugged.

The section on isolating medium, paragraph III.G.6. in this final rulemaking, was modified to clarify the types of minerals requiring protection as explained above. Another comment on this section suggested deleting the 15,000 pound maximum tagging weight provision. This comment was adopted because setting a maximum weight to be used to tag a plug is unnecessary.

The minimum standard in paragraph III.G.8. of this final rulemaking has been modified from the draft as suggested by a comment to clarify the cement plug requirement at the surface. This standard now states that the top 50 feet of the hole shall be plugged and removes the reference restricting this plug to the smallest casing extending to the surface. All annuluses within 50 feet of the surface are to be plugged off. Another comment on this provision suggested 100 feet of plug rather than 50 feet. This comment was not adopted because 50 feet is adequate if propoerly placed.

Paragraph III.G.10. concerning the surface cap was modified as suggested by comments to improve the clarity and sequence. Another comment on this minimum standard questioned the purpose of the weep hole. This term is defined and explained in the definitions section.

Discussion of IV Variances From Minimum Standard

The only comments on this section requested the addition of provision for oral variances during emergency situations. The final rulemaking adopts this suggestion, although such requests by the operator are required to be followed up by a written request as specified in the new wording. This change was incorporated in recognition that an emergency or other event that could not have been reasonably foreseen may occur during drilling operations.

Discussion of Attachments

Several comments were received concerning the choke manifold equipment configurations. A statement has been added to each of the pressure systems diagrams in response to the comments to indicate that the configuration of the equipment may

ary. This was the original intent and addition of the statement improves ity.

Another comment requested that one of the two valves on the bleed line to the pit be removed from the requirement for equipment for pressure ratings of 3M and above. This comment was adopted for 3M systems, but was rejected for higher rated systems due to the higher pressures involved.

The principal authors of this proposed rulemaking are Howard Lemm of the Utah State Office, Carl Budd of the Rock Springs District Office, Hal Stoops of the Bakersfield District Office, and Bob Kent of the Washington Office, assisted by the staff of the Division of Legislation and Regulatory Management, Bureau of Land Management.

It is hereby designated that this proposed rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

The information collection requirements contained in 43 CFR Part 3160 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance numbers 1004–0134 and 1004–0136.

List of Subjects in 43 CFR Part 3160

Government contracts, Mineral royalties, Oil and gas exploration, Oil and gas production, Public lands—mineral resources, Indian lands—mineral resources, Reporting and recordkeeping requirements.

Under the authorities cited below, Part 3160, Group 3100, Subchapter C, Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below.

October 11, 1988.

J. Steven Griles,

Assistant Secretary of the Interior.

PART 3160—[AMENDED]

1. The authority citation for Part 3160 continues to read:

Authority: The Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 183 et seq.), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359), the Act of May 21, 1930 (30 U.S.C. 301–306), the Act of March 3, 1909, as amended (25 U.S.C. 396), the Act of May 11, 1938, as amended (25 U.S.C. 396a–396g), the Act of Feburary 28, 1891, as amended (25 U.S.C. 397), the Act of May 29, 1924 (25 U.S.C. 398), the Act of March 3, 1927 (25 U.S.C. 398a–398e), the Act of June 30, 1919, as amended (25 U.S.C. 399), R.S. 441 (43 U.S.C. 1457), See also Attorney General's Opinion of April 2, 1941 (40 Op. Atty., Gen. 41), the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 471 et seq.), the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.), the Act of December 12, 1980 (42 U.S.C. 6508), the Combined Hydrocarbon Leasing Act of 1981 (Pub. L. 97–78), the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 et seq.) and the Indian Mineral Development Act of 1982 (25 U.S.C. 2102 et seq.).

2. Section 3164.1(b) is amended by adding the following entry to the table which is part of § 3164.1(b):

§ 3164.1 Onshore oil and gas orders.

* * * * *

(b) * * *

Number	Subject	Effective date	Federal Register reference	Supersedes
1	Approval of operations	November 21 1983	48 FR 48916 and 48 FR 56226	NTL-6
2	Drilling operations			None

Note.—Numbers will be assigned by the Washington Office, Bureau of Land Management, to additional Orders as they are prepared for publication and added to this table.

Note.—This appendix is published for information only and will not appear in the Code of Federal Regulations.

Appendix—Text of Oil and Gas Order No. 2.

Onshore Oil and Gas Order No. 2

Drilling Operations on Federal and Indian Oil and Gas Leases

I. Introduction.
- A. Authority.
- B. Purpose.
- C. Scope.
- D. General.

II. Definitions.

III. Requirements.
- A. Well Control Requirements.
- B. Casing and Cementing Requirements.
- C. Mud Program Requirements.
- D. Drill Stem Testing Requirements.
- E. Special Drilling Operations.
- F. Surface Use.
- G. Drilling Abandonment.
- H. Variances from Minimum Standards.

Attachments.
I. Diagrams of Choke Manifold Requirements.
II. Sections from 43 CFR Subparts 3163 and 3165.

Onshore Oil and Gas Order No. 2

Drilling Operations on Federal and Indian Oil and Gas Leases

I. Introduction

A. Authority

This order is established pursuant to the authority granted to the Secretary of the Interior pursuant to various Federal and Indian mineral leasing statutes and the Federal Oil and Gas Royalty Management Act of 1982. This authority has been delegated to the Bureau of Land Management and is implemented by the onshore oil and gas operating regulations contained in 43 CFR Part 3160. Section 3164.1 thereof specifically authorizes the Director, Bureau of Land Management, to issue Onshore Oil and Gas Orders when necessary to implement and supplement the operating regulations and provides that all such Orders shall be binding on the lessees and operators of Federal and restricted Indian (except Osage tribe) oil and gas leases that have been, or may hereafter be, issued.

Specific authority for the provisions contained in this Order is found at: § 3162.3–1 *Drilling Applications and Plans;* § 3162.3–4 *Well Abandonment;* § 3162.4–1 *Well Records and Reports;* § 3162.4–3 *Samples, Tests, and Surveys;* § 3162.5–1 *Environmental Obligations;* § 3162.5–2 *Control of Wells;* § 3162.5–2(a) *Drilling Wells;* § 3162.5–3 *Safety Precautions;* and Subpart 3163 Noncompliance and Assessment.

B. Purpose

This onshore Order details the Bureau's uniform national standards for the minimum levels of performance expected from lessees and operators when conducting drilling operations on Federal and Indian lands (except Osage Tribe) and for abandonment immediately following drilling. The

purpose also is to identify the enforcement actions that will result when violations of the minimum standards are found, and when those violations are not abated in a timely manner.

C. Scope

This Order is applicable to all onshore Federal and Indian (except Osage Tribe) oil and gas leases.

D. General

1. If an operator chooses to use higher rated equipment than that authorized in the Application for Permit to Drill (APD), testing procedures shall apply to the approved working pressures, not the upgraded higher working pressures.

2. Some situations may exist either on a well-by-well or field-wide basis whereby it is commonly accepted practice to vary a particular minimum standard(s) established in this Order. This situation may be resolved by requesting a variance (See section IV of this Order), by the inclusion of a stipulation to the APD, or by the issuance of a Notice to Lessees and Operators (NTL) by the appropriate BLM office.

3. When a violation is discovered, and if it does not cause or threaten immediate substantial and adverse impact on public health and safety, the environment, production accountability or royalty income, it will be classified as minor. The violation may be reissued as a major violation if not corrected during the abatement period and continued drilling has changed the adverse impact of the violation so that it meets the specific definition of a major violation.

4. This Onshore Order is not intended to circumvent the reporting requirements or compliance aspects that may be stated elsewhere in Existing NTL's, Onshore Orders, etc. A lessee's compliance with the requirements of the regulations in this Part shall not relieve the lessee of the obligation to comply with other applicable laws and regulations in accordance with 43 CFR 3162.5–1(c). Lessee's should give special attention to the automatic assessment provisions in 43 CFR 3163.1(b).

5. This Order is based upon the assumption that operations have been approved in accordance with 43 CFR Part 3160 and Onshore Oil and Gas Order No. 1. Failure to obtain approval prior to commencement of drilling or related operations shall subject the operator to immediate assessment under 43 CFR 3163.1(b)(2).

II. Definitions.

A. Abnormal Pressure Zone means a zone that has either pressure above or below the normal gradient for an area and/or depth.

B. Bleed Line means the vent line that bypasses the chokes in the choke manifold system; also referred to as Panic Line.

C. Blooie Line means a discharge line used in conjunction with a rotating head.

D. Drilling Spool means a connection component with both ends either flanged or hubbed, with an internal diameter at least equal to the bore of the casing, and with smaller side outlets for connecting auxiliary lines.

E. Exploratory Well means any well drilled beyond the known producing limits of a pool.

F. Fill-up Line means the line used to fill the hole when the drill pipe is being removed from the well. It is usually connected to a 2-inch collar that is welded into a drilling nipple.

G. Flare Line means a line used to carry gas away from the rig to be burned at a safer location. The gas comes from the degasser, gas buster, separator, or when drill stem testing, directly from the drill pipe.

H. Functionally Operated means activating equipment without subjecting it to well-bore pressure.

I. Isolating means using cement to protect, separate, or segregate usable water and mineral resources.

J. Lease means any contract, profit-share agreement, joint venture, or other agreement issued or approved by the United States under a mineral leasing law that authorizes exploration for, extraction of, or removal of oil or gas (See 43 CFR 3160.0–5).

K. Lessee means a person holding record title in a lease issued by the United States (See 43 CFR3160.0–5).

L. Make-up Water means water that is used in mixing slurry for cement jobs and plugging operations, and is compatible with the cement constituents being used.

M. Manual Locking Device means any manually activated device, such as hand wheels, etc., that is used for the purpose of locking the preventer in the closed position.

N. Mud for Plugging Purposes means a slurry of bentonite or similar flocculent/viscosifier, water, and additives needed to achieve the desired weight and consistency to stabilize the hole.

O. Mudding Up means adding materials and chemicals to water to control the viscosity, weight, and filtrate loss of the circulating system.

P. Operating Rights Owner (or Owner) means a person or entity holding operating rights in a lease issued by the United States. A lessee also may be an operating rights owner if the operating rights in a lease or portion thereof have not been severed from record title.

Q. Operational means capable of functioning as designed and installed without undue force or further modification.

R. Operator means any person or entity, including but not limited to the lessee or operating rights owner, who has stated in writing to the authorized officer his/her responsibility for the operations conducted in the leased lands or a portion thereof.

S. Precharge Pressure means the nitrogen pressure remaining in the accumulator after all the hydraulic fluid has been expelled from beneath the movable barrier.

T. Prompt Correction means immediate correction of violations, with drilling suspended if required in the discretion of the authorized officer.

U. Prospectively Valuable Deposit of Minerals means any deposit of minerals that the authorized officer determines to have characteristics of quantity and quality that warrant its protection.

V. Tagging the Plug means running in the hole with a string of tubing or drill pipe and placing the weight of that string on the plug. Other methods of tagging the plug may be approved by the authorized officer.

W. Targeted Tee or Turn means a fitting used in pressure piping in which a bull plug or blind flange of the same pressure rating as the rest of the approved system is installed at the end of a tee or cross, opposite the fluid entry arm, to change the direction of flow and to reduce erosion.

X. 2M, 3M, 5M, 10M, and 15M mean the pressure ratings used for equipment with a working pressure rating of the equivalent thousand pounds per square inch (psi) (2M=2,000 psi, 3M=3,000 psi, etc.).

Y. Usable Water means generally those waters containing up to 10,000 ppm of total dissolved solids.

Z. Weep Hole means a small hole that allows pressure to bleed off through the metal plate used in covering well bores after abandonment operations.

III. Requirements

A. Well Control Requirements

1. Blowout preventer (BOP) and related equipment (BOPE) shall be installed, used, maintained, and tested in a manner necessary to assure well control and shall be in place and operational prior to drilling the surface casing shoe unless otherwise approved by the APD. Commencement of drilling without the approved BOPE installed, unless otherwise approved, shall subject

perator to immediate assessment 43 CFR 3163.1(b)(1). The BOP and control equipment shall be ble for operations in those areas which are subject to sub-freezing conditions. The BOPE shall be based on known or anticipated sub-surface pressures, geologic conditions, accepted engineering practice, and surface environment. Item number 7 of the 8 point plan in the APD specifically addresses expected pressures. The working pressure of all BOPE shall exceed the anticipated surface pressure to which it may be subjected, assuming a partially evacuated hole with a pressure gradient of 0.22 psi/ft.

2. The gravity of the violation for many of the well control minimum standards listed below are shown as minor. However, very short abatement periods in this Order are often specified in recognition that by continuing to drill, the violation which was originally determined to be of a minor nature may cause or threaten immediate, substantial and adverse impact on public health and safety, the environment, production accountability, or royalty income, which would require its reclassification as a major violation.

a. *Minimum standards and ...cement provisions for well control ...ent.* i. A well control device shall ...alled at the surface that is ca...le of complete closure of the well bore. This device shall be closed whenever the well is unattended.

Violation: Major.

Corrective Action: Install the equipment as specified.

Normal Abatement Period: Prompt correction required.

ii. 2M system: OR

—Annular preventer, double ram, or two rams with one being blind and one being a pipe ram *

—Kill line (2 inch minimum)

—1 kill line valve (2 inch minimum)

—1 choke line valve

—2 chokes (refer to diagram in Attachment 1)

—Upper kelly cock valve with handle available

—Safety valve and subs to fit all drill strings in use

—Pressure gauge on choke manifold

—2 inch minimum choke line

—Fill-up line above the uppermost preventer.

Violation: Minor (all items unless marked by asterisk).

Corrective Action: Install the equipment as specified.

...mal Abatement Period: 24 hours.

...ation: Major.

...ective Action: Install the equipment as specified.

Normal Abatement Period: Prompt correction required.

iii. 3M system:

—Annular preventers *

—Double ram with blind rams and pipe rams *

—Drilling spool, or blowout preventer with 2 side outlets (choke side shall be a 3-inch minimum diameter, kill side shall be at least 2-inch diameter) *

—Kill line (2 inch minimum)

—A minimum of 2 choke line valves (3 inch minimum) *

—3 inch diameter choke line

—2 kill line valves, one of which shall be a check valve (2 inch minimum) *

—2 chokes (refer to diagram in Attachment 1)

—Pressure gauge on choke manifold

—Upper kelly cock valve with handle available

—Safety valve and subs to fit all drill string connections in use

—All BOPE connections subjected to well pressure shall be flanged, welded, or clamped *

—Fill-up line above the uppermost preventer.

Violation: Minor (all items unless marked by asterisk).

Corrective Action: Install the equipment as specified.

Normal Abatement Period: 24 hours.

* Violation: Major.

Corrective Action: Install the equipment as specified.

Normal Abatement Period: Prompt correction required.

iv. 5M system:

—Annular preventer *

—Pipe ram, blind ram, and, if conditions warrant, as specified by the authorized officer, another pipe ram shall also be required *

—A second pipe ram preventer or variable bore pipe ram preventer shall be used with a tapered drill string

—Drilling spool, or blowout preventer with 2 side outlets (choke side shall be a 3-inch minimum diameter, kill side shall be at least 2-inch diameter) *

—3 inch diameter choke line

—2 choke line valves (3 inch minimum) *

—Kill line (2 inch minimum)

—2 chokes with 1 remotely controlled from rig floor (refer to diagram in Attachment 1)

—2 kill line valves and a check valve (2 inch minimum) *

—Upper kelly cock valve with handle available

—When the expected pressures approach working pressure of the system, 1 remote kill line tested to stack pressure (which shall run to the outer edge of the substructure and be unobstructed)

—Lower kelly cock valve with handle available

—Safety valve(s) and subs to fit all drill string connections in use

—Inside BOP or float sub available

—Pressure gauge on choke manifold

—All BOPE connections subjected to well pressure shall be flanged, welded, or clamped *

—Fill-up line above the uppermost preventer.

Violation: Minor (all items unless marked by asterisk).

Corrective Action: Install the equipment as specified.

Normal Abatement Period: 24 hours

* Violation: Major.

Corrective Action: Install the equipment as specified.

Normal Abatement Period: Prompt correction required.

v. 10M & 15M system:

—Annular preventer *

—2 pipe rams *

—Blind rams *

—Drilling spool, or blowout preventer with 2 side outlets (choke side shall be a 3-inch minimum diameter, kill side shall be at least 2-inch diameter) *

—3 inch choke line *

—2 kill line valves (2 inch minimum) and check valve *

—Remote kill line (2 inch minimum) shall run to the outer edge of the substructure and be unobstructed

—Manual and hydraulic choke line valves (3 inch minimum) *

—3 chokes, 1 being remotely controlled (refer to diagram in Attachment 1)

—Pressure gauge on choke manifold

—Upper kelly cock valve with handle available

—Lower kelly cock valve with handle available

—Safety valves and subs to fit all drill string connections in use

—Inside BOP or float sub available

—Wear ring in casing head

—All BOPE connections subjected to well pressure shall be flanged, welded, or clamped *

—Fill-up line installed above the uppermost preventer.

Violation: Minor (all items unless marked by asterisk).

Corrective Action: Install the equipment as specified.

Normal Abatement Period: 24 hours.

* Violation: Major.

Corrective Action: Install the equipment as specified.

Normal Abatement Period: Prompt correction required.

vi. If repair or replacement of the BOPE is required after testing, this work shall be performed prior to drilling out the casing shoe.

Violation: Major.

Corrective Action: Install the equipment as specified.

Normal Abatement Period: Prompt correction required.

vii. When the BOPE cannot function to secure the hole, the hole shall be secured using cement, retrievable packer or a bridge plug packer, bridge plug, or other acceptable approved method to assure safe well conditions.

Violation: Major.

Corrective Action: Install the equipment as specified.

Normal. Abatement Period: Prompt correction required.

b. *Minimum standards and enforcement provisions for choke manifold equipment.* i. All choke lines shall be straight lines unless turns use tee blocks or are targeted with running tees, and shall be anchored to prevent whip and reduce vibration.

Violation: Minor

Corrective Action: Install the equipment as specified.

Normal Abatement Period: 24 hours.

ii. Choke manifold equipment configuration shall be functionally equivalent to the appropriate example diagram shown in Attachment 1 of this Order.

Violation: Minor

Corrective Action: Install the equipment as specified.

Normal Abatement Period: Prompt correction required.

iii. All valves (except chokes) in the kill line, choke manifold, and choke line shall be a type that does not restrict the flow (full opening) and that allows a straight through flow (same enforcement as item ii).

iv. Pressure gauges in the well control system shall be a type designed for drilling fluid service (same enforcement as above).

c. *Minimum standards and enforcement provisions for pressure accumulator system.* i. 2M system—accumulator shall have sufficient capacity to close all BOP's and retain 200 psi above precharge. Nitrogen bottles that meet manufacturer's specifications may be used as the backup to the required independent power source.

Violation: Minor

Corrective Action: Install the equipment as specified.

Normal Abatement Period: 24 hours.

ii. 3M system—accumulator shall have sufficient capacity to open the hydraulically-controlled choke line valve (if so equipped), close all rams plus the annual preventer, and retain a minimum of 200 psi above precharge on the closing manifold without the use of the closing unit pumps. This is a minimum requirement. The fluid reservoir capacity shall be double the accumulator capacity and fluid level maintained at manufacturer's recommendations. The 3M system shall have 2 independent power sources to close the preventers. Nitrogen bottles (3 minimum) may be 1 of the independent power sources and, if so, shall maintain a charge equal to the manufacturer's specifications.

Violation: Minor.

Corrective Action: install the equipment as specified.

Normal Abatement Period: 24 hours.

iii. 5M and higher system—accumulator shall have sufficient capacity to open the hydraulically-controlled gate valve (if so equipped) and close all rams plus the annular preventer (for 3 ram systems add a 50 percent safety factor to compensate for any fluid loss in the control system or preventers) and retain a minimum pressure of 200 psi above precharge on the closing manifold without use of the closing unit pumps. The reservoir capacity shall be double the accumulator capacity, and the fluid level shall be maintained at manufacturer's recommendations. Two independent sources of power shall be available for powering the closing unit pumps. Sufficient nitrogen bottles are suitable as a backup power source only, and shall be recharged when the pressure falls below manufacturer's specifications.

Violation: Minor.

Corrective Action: Install the equipment as specified.

Normal Abatement Period: 24 hours.

d. *Minimum standards and enforcement provisions for accumulator precharge pressure test.* This test shall be conducted prior to connecting the closing unit to the BOP stack and at least once every 6 months. The accumulator pressure shall be corrected if the measured precharge pressure is found to be above or below the maximum or minimum limit specified below (only nitrogen gas may be used to precharge):

Accumulator working pressure rating	Minimum acceptable operating pressure	Desired precharge pressure	Maximum acceptable precharge pressure	Minimum acceptable precharge pressure
1,500 psi	1,500 psi	750 psi	800 psi	700 psi
2,000 psi	2,000 psi	1,000 psi	1,100 psi	900 psi
3,000 psi	3,000 psi	1,000 psi	1,100 psi	900 psi

Violation: Minor.

Corrective Action: Perform test.

Normal Abatement Period: 24 hours.

e. *Minimum standards and enforcement provisions for power availability.* Power for the closing unit pumps shall be available to the unit at all times so that the pumps shall automatically start when the closing unit manifold pressure has decreased to a pre-set level.

Violation: Major.

Corrective Action: Install the equipment as specified.

Normal Abatement Period: Prompt correction required.

f. *Minimum standards and enforcement provisions for accumulator pump capacity.* Each BOP closing unit shall be equipped with sufficient number and sizes of pumps so that, with the accumulator system isolated from service, the pumps shall be capable of opening the hydraulically-operated gate valve (if so equipped), plus closing the annular preventer on the smallest size drill pipe to be used within 2 minutes, and obtain a minimum of 200 psi above specified accumulator precharge pressure.

Violation: Minor.

Corrective Action: Install the equipment as specified.

Normal Abatement Period: 24 hours.

g. *Minimum standards and enforcement provisions for locking devices.* A manual locking device (i.e., hand wheels) or automatic locking devices shall be installed on all systems of 2M or greater. A valve shall be installed in the closing line as close as possible to the annular preventer to act as a locking device. This valve shall be maintained in the open position and shall be closed only when the power source for the accumulator system is inoperative.

Violation: Minor.

Corrective Action: Install the equipment as specified.

Normal Abatement Period: 24 hours.

h. *Minimum standards and enforcement provisions for remote*

...ols. Remote controls shall be ...y accessible to the driller. Remote ...rols for all 3M or greater systems shall be capable of closing all preventers. Remote controls for 5M or greater systems shall be capable of both opening and closing all preventers. Master controls shall be at the accumulator and shall be capable of opening and closing all preventers and the choke line valve (if so equipped). No remote control for a 2M system is required.

Violation: Minor.

Corrective Action: Install the equipment as specified.

Normal Abatement Period: 24 hours.

i. *Minimum standards and enforcement provisions for well control equipment testing.* i. Perform all tests described below using clear water or an appropriate clear liquid for subfreezing temperatures with a viscosity similar to water.

ii. Ram type preventers and associated equipment shall be tested to approved (see item I.D.1. of this order) stack working pressure if isolated by test plug or to 70 percent of internal yield pressure of casing if BOP stack is not isolated from casing. Pressure shall ... maintained for at least 10 minutes or ... requirements of test are met, ...ever is longer. If a test plug is ...ed, no bleed-off of pressure is acceptable. For a test not utilizing a test plug, if a decline in pressure of more than 10 percent in 30 minutes occurs, the test shall be considered to have failed. Valve on casing head below test plug shall be open during test of BOP stack.

iii. Annular type preventers shall be tested to 50 percent of rated working pressure. Pressure shall be maintained at least 10 minutes or until provisions of test are met, whichever is longer.

iv. As a minimum, the above test shall be performed:

A. when initially installed;

B. whenever any seal subject to test pressure is broken;

C. following related repairs; and

D. at 30-day intervals.

v. Valves shall be tested from working pressure side during BOPE tests with all down stream valves open.

vi. When testing the kill line valve(s), the check valve shall be held open or the ball removed.

vii. Annular preventers shall be functionally operated at least weekly.

viii. Pipe and blind rams shall be activated each trip, however, this function need not be performed more ... once a day.

... BOPE pit level drill shall be ...ucted weekly for each drilling crew.

x. Pressure tests shall apply to all related well control equipment.

xi. All of the above described tests and/or drills shall be recorded in the drilling log.

Violation: Minor.

Corrective action: Perform the necessary test or provide documentation.

Normal Abatement Period: 24 hours or next trip, as most appropriate.

B Casing and Cementing Requirements

The proposed casing and cementing programs shall be conducted as approved to protect and/or isolate all usable water zones, potentially productive zones, lost circulation zones, abnormally pressured zones, and any prospectively valuable deposits of minerals. Any isolating medium other than cement shall receive approval prior to use. The casing setting depth shall be calculated to position the casing seat opposite a competent formation which will contain the maximum pressure to which it will be exposed during normal drilling operations. Determination of casing setting depth shall be based on all relevant factors, including: presence/absence of hydrocarbons; fracture gradients; usable water zones; formation pressures; lost circulation zones; other minerals; or other unusual characteristics. All indications of usable water shall be reported.

—Minimum design factors for tensions, collapse, and burst that are incorporated into the casing design by an operator/leasee shall be submitted to the authorized operator for his review and approval along with the APD for all exploratory wells or as otherwise specified by the authorized officer.

—Casing design shall assume formation pressure gradients of 0.44 to 0.50 psi per foot for exploratory wells (lacking better data).

—Casing design shall assume fracture gradients from 0.70 to 1.00 psi per foot for exploratory wells (lacking better data).

—Casing collars shall have a minimum clearance of 0.422 inches on all sides in the hole/casing annulus, with recognition that variances can be granted for justified exceptions.

—All waiting on cement times shall be adequate to achieve a minimum of 500 psi compressive strength at the casing shoe prior to drilling out.

1. Minimum Standards and Enforcement Provisions for Casing and Cementing.

a. All casing, except the conductor casing, shall be new or reconditioned and tested used casing that meets or exceeds API standards for new casing.

Violation: Major

Corrective Action: Perform remedial action as specified by the authorized officer.

Normal Abatement Period: Prompt correction required.

b. For liners, a minimum of 100 feet of overlap between a string of casing and the next larger casing is required. The interval of overlap shall be sealed and tested. The liner shall be tested by a fluid entry or pressure test to determine whether a seal between the liner top and the next larger string has been achieved. The test pressure shall be the maximum anticipated pressure to which the seal will be exposed. No test shall be required for liners that do not incorporate or need a seal mechanism.

Violation: Minor.

Corrective Action: Perform remedial action as specified by the authorized officer.

Normal Abatement Period: Upon determination of corrective action.

c. The surface casing shall be cemented back to surface either during the primary cement job or by remedial cementing.

Violation: Major.

Corrective Action: Perform remedial cementing.

Normal Abatement Period: Prompt correction required.

d. All of the above described tests shall be recorded in the drilling log.

Violation: Minor.

Corrective Action: Perform the necessary test or provide documentation.

Normal Abatement Period: 24 hours.

e. All indications of usable water shall be reported to the authorized officer prior to running the next string of casing or before plugging orders are requested, whichever occurs first.

Violation: Major.

Corrective Action: Report information as required.

Normal Abatement Period: Prompt correction required.

f. Surface casing shall have centralizers on every fourth joint of casing starting with the shoe joint and up to the bottom of the cellar.

Violations: Major.

Corrective Action: Logging/testing may be required to determine the quality of the job. Recementing may then be specified.

Normal Abatement Period: Prompt correction upon determination of corrective action.

g. Top plugs shall be used to reduce contamination of cement by displacement fluid. A bottom plug or other acceptable technique, such as a suitable preflush fluid, inner string cement method, etc., shall be utilized to

help isolate the cement from contamination by the mud fluid being displaced ahead of the cement slurry.

Violation: Major

Correction Action: Logging may be required to determine the quality of the cement job. Recementing or further recementing may then be specified.

Normal Abatement Period: Based upon determination of corrective action.

h. All casing strings below the conductor shall be pressure tested to 0.22 psi per foot of casing string length or 1500 psi, whichever is greater, but not to exceed 70 percent of the minimum internal yield. If pressure declines more than 10 percent in 30 minutes, corrective action shall be taken.

Violation: Minor.

Corrective Action: Perform the test and/or remedial action as specified by the authorized officer.

Normal Abatement Period: 24 hours.

i. On all exploratory wells, and on that portion of any well approved for a 5M BOPE system or greater, a pressure integrity test of each casing shoe shall be performed. Formation at the shoe shall be tested to a minimum of the mud weight equivalent anticipated to control the formation pressure to the next casing depth or at total depth of the well. This test shall be performed before drilling more than 20 feet of new hole.

Violation: Minor.

Corrective Action: Perform the specified test.

Normal Abatement Period: 24 hours.

C. Mud Program Requirements

The characteristics, use, and testing of drilling mud and the implementation of related drilling procedures shall be designed to prevent the loss of well control. Sufficient quantities of mud materials shall be maintained or readily accessible for the purpose of assuring well control.

Minimum Standards and Enforcement Provisions for Mud Program and Equipment

1. Record slow pump speed on daily drilling report after mudding up.

Violation: Minor.

Corrective Action: Record required information.

Normal Abatement Period: 24 hours.

2. Visual mud monitoring equipment shall be in place to detect volume changes indicating loss or gain of circulating fluid volume.

Violation: Minor.

Corrective Action: Install necessary equipment.

Normal Abatement Period: 24 hours.

3. When abnormal pressures are anticipated, Electronic/mechanical mud monitoring equipment shall be required, which shall include as a minimum: pit volume totalizer (PVT); stroke counter; and flow sensor.

Violation: Minor.

Corrective Action: Install necessary instrumentation.

Normal Abatement Period: 24 hours.

4. A mud test shall be performed every 24 hours after mudding up to determine, as applicable: density, viscosity, gel strength, filtration, and pH.

Violation: Minor.

Corrective Action: Perform necessary tests.

Normal Abatement Period: 24 hours.

5. A trip tank shall be used on 10M and 15M systems and on upgraded 5M systems as determined by the authorized officer.

Violation: Minor.

Corrective Action: Install necessary equipment.

Normal Abatement Period: 24 hours.

6. a. Gas detecting equipment shall be installed in the mud return system for exploratory wells or wells where abnormal pressure is anticipated, and hydrocarbon gas shall be monitored for pore pressure changes.

b. Hydrogen sulfide safety and monitoring equipment shall be available and in use where atmospheric concentrations of hydrogen sulfide of 20 ppm or greater are anticipated.

Violation: Minor.

Corrective Action: Install necessary equipment.

Normal Abatement Period: 24 hours.

7. All flare systems shall be designed to gather and burn all gas. The flare line(s) discharge shall be located not less than 100 feet from the well head, having straight lines unless turns are targeted with running tees, and shall be positioned downwind of the prevailing wind direction and shall be anchored. The flare system shall have an effective method for ignition. Where noncombustible gas is likely or expected to be vented, the system shall be provided supplemental fuel for ignition and to maintain a continuous flare.

Violation: Major.

Corrective Action: Install equipment as specified.

Normal Abatement Period: 24 hours.

8. A mud-gas separator (gas buster) shall be installed and operable for all systems of 10M or greater and for any system where abnormal pressure is anticipated beginning at a point at least 500 feet above any anticipated hydrocarbon zone of interest.

Violation: Minor.

Corrective Action: Install required equipment.

Normal Abatement Period: Prompt correction required.

D. Drill Stem Testing Requirements

Initial opening of drill stem test tools shall be restricted to daylight hours unless specific approval to start during other hours is obtained from the authorized officer. However, DSTs may be allowed to continue at night if the test was initiated during daylight hours and the rate of flow is stabilized and if adequate lighting is available (i.e., lighting which is adequate for visibility and vapor-proof for safe operations). Packers can be released, but tripping shall not begin before daylight, unless prior approval is obtained from the authorized officer. Closed chamber DSTs may be accomplished day or night.

Minimum Standards for Drill Stem Testing

1. A DST that flows to the surface with evidence of hydrocarbons shall be either reversed out of the testing string under controlled surface conditions, or displaced into the formation prior to pulling the test tool. This would involve providing some means for reverse circulation.

Violation: Major.

Corrective Action: Contingent on circumstances and as specified by the authorized officer.

Normal Abatement Period: Prompt correction required.

2. Separation equipment required for the anticipated recovery shall be properly installed before a test starts.

Violation: Major.

Corrective Action: Install required equipment.

Normal Abatement Period: Prompt correction required.

3. All engines within 100 feet of the wellbore that are required to "run" during the test shall have spark arresters or water cooled exhausts.

Violation: Major.

Corrective Action: Install required equipment.

Normal Abatement Period: Prompt correction required.

E. Special Drilling Operations

1. In addition to the equipment already specified elsewhere in this onshore order, the following equipment shall be in place and operational during air/gas drilling:

—Properly lubricated and maintained rotating head *

—Spark arresters on engines or water cooled exhaust *

—Blooie line discharge 100 feet from well bore and securely anchored

—Straight run on blooie line unless otherwise approved

—Deduster equipment *

—All cuttings and circulating medium ll be directed into a reserve or blooie

—Float valve above bit *

—Automatic igniter or continuous pilot light on the blooie line *

—Compressors located in the opposite direction from the blooie line a minimum of 100 feet from the well bore

—Mud circulating equipment, water, and mud materials (does not have to be premixed) sufficient to maintain the capacity of the hole and circulating tanks or pits

Violation: Minor (unless marked by an asterisk).

Corrective Action: Install the equipment as specified.

Normal Abatement Period: 24 hours.

* Violation: Major.

Corrective Action: Install the equipment as specified.

Normal Abatement Period: Prompt correction required.

2. Hydrogen sulphide operation is specifically addressed under Onshore Oil and Gas Order No. 6.

F. Surface Use

Onshore Oil and Gas Order No. 1 specifically addresses surface use. That Order provides for safe operations, dequate protection of surface resources uses, and other environmental ponents. The operator/lessee is ponsible for, and liable for, all building, construction, and operating activities and subcontracting activities conducted in association with the APD. Requirements and special stipulations for surface use are contained in or attached to the approved APD. Minimum Standards and Enforcement Provisions for Surface Use.

The requirements and stipulations of approval shall be strictly adhered to by the operator/lessee and any contractors.

Violation: If a violation is identified by the authorized officer he shall determine whether it is major or minor, considering the definitions in 43 CFR 3160.0–5, and shall specify the appropriate corrective action and abatement period.

G. Drilling Abandonment Requirements

The following standards apply to the abandonment of newly drilled dry or non-productive wells in accordance with 43 CFR 3162.3–4 and section V of Onshore Oil and Gas Order No. 1. Approval shall be obtained prior to the commencement of abandonment. All formations bearing usable-quality water, oil, gas, or geothermal resources, and/or spectively valuable deposit of rals shall be protected. Approval be given orally by the authorized officer before abandonment operations are initiated. This oral request and approval shall be followed by a written notice of intent to abandon filed not later than the fifth business day following oral approval. Failure to obtain approval prior to commencement of abandonment operations shall result in immediate assessment of under 43 CFR 3163.1(b)(3). The hole shall be in static condition at the time any plugs are placed (this does not pertain to plugging lost circulation zones). Within 30 days of completion of abandonment, a subsequent report of abandonment shall be filed. Plugging design for an abandonment hole shall include the following:

1. Open Hole.

i. A cement plug shall be placed to extend at least 50 feet below the bottom (except as limited by total depth (TD) or plugged back total depth (PBTD)), to 50 feet above the top of:

a. Any zone encountered during drilling which contains fluid or gas with a potential to migrate;

b. Any prospectively valuable deposit of minerals.

ii. All cement plugs, except the surface plug, shall have sufficient slurry volume to fill 100 feet of hole, plus an additional 10 percent of slurry for each 1,000 feet of depth.

iii. No plug, except the surface plug, shall be less than 25 sacks without receiving specific approval from the authorized officer.

iv. Extremely thick sections of a single formation may be secured by placing 100-foot plugs across the top and bottom of the formation, and in accordance with item ii hereof.

v. In the absence of productive zones or prospectively valuable deposits of minerals which otherwise require placement of cement plugs, long sections of open hole shall be plugged at least every 3,000 feet. Such plugs shall be placed across in-gauge sections of the hole, unless otherwise approved by the authorized officer.

2. Cased Hole. A cement plug shall be placed opposite all open perforations and extend to a minimum of 50 feet below (except as limited by TD or PBTD) to 50 feet above the perforated interval. All cement plugs, except the surface plug, shall have sufficient slurry volume to fill 100 feet of hole, plus an additional 10 percent of slurry for each 1,000 feet of depth. In lieu of the cement plug, a bridge plug is acceptable, provided:

i. The bridge plug is set within 50 feet to 100 feet above the open perforations;

ii. The perforations are isolated from any open hole below; and

iii. The bridge plug is capped with 50 feet of cement. If a bailer is used to cap this plug, 35 feet of cement shall be sufficient.

3. Casing Removed from Hole. If any casing is cut and recovered, a cement plug shall be placed to extend at least 50 feet above and below the stub. The exposed hole resulting from the casing removal shall be secured as required in items 1i and 1ii hereof.

4. An additional cement plug placed to extend a minimum of 50 feet above and below the shoe of the surface casing (or intermediate string, as appropriate).

5. Annular Space. No annular space that extends to the surface shall be left open to the drilled hole below. If this condition exists, a minimum of the top 50 feet of annulus shall be plugged with cement.

6. Isolating Medium. Any cement plug which is the only isolating medium for a fresh water interval or a zone containing a prospectively valuable deposit of minerals shall be tested by tagging with the drill string. Any plugs placed where the fluid level will not remain static also shall be tested by either tagging the plug with the working pipe string, or pressuring to a minimum pump (surface) pressure of 1,000 psi, with no more than a 10 percent drop during a 15-minute period (cased hole only). If the integrity of any other plug is questionable, or if the authorized officer has specific concerns for which he/she orders a plug to be tested, it shall be tested in the same manner.

7. Silica Sand or Silica Flour. Silica sand or silica flour shall be added to cement exposed to bottom hole static temperatures above 230 °F to prevent heat degradation of the cement.

8. Surface Plug. A cement plug of at least 50 feet shall be placed across all annuluses. The top of this plug shall be placed as near the eventual casing cut-off point as possible.

9. Mud. Each of the intervals between plugs shall be filled with mud of sufficient density to exert hydrostatic pressure exceeding the greatest formation pressure encountered while drilling such interval. In the absense of other information at the time plugging is approved, a minimum mud weight of 9 pounds per gallon shall be specified.

10. Surface Cap. All casing shall be cut-off at the base of the cellar or 3 feet below final restored ground level (whichever is deeper). The well bore shall then be covered with a metal plate at least ¼ inch thick and welded in place, or a 4-inch pipe, 10-feet in length, 4 feet above ground and embedded in cement as specified by the authorized officer. The well location and identity shall be permanently inscribed. A weep

hole shall be left if a metal plate is welded in place.

11. The cellar shall be filled with suitable material as specified by the authorized officer and the surface restored in accordance with the instructions of the authorized officer.

Minimum Standard

All plugging orders shall be strictly adhered to.

Violation: Major.

Corrective Action: Contingent upon circumstances.

Normal Abatement Period: Prompt correction required.

IV. Variances From Minimum Standard

An operator may request the authorized officer to approve a variance from any of the minimum standards prescribed in section III hereof. All such requests shall be submitted in writting to the appropriate authorized officer and provide information as to the circumstances which warrant approval of the variance(s) requested and the proposed alternative methods by which the related minimum standard(s) are to be satisfied. The authorized officer, after considering all relevant factors, if appropriate, may approve the requested variance(s) if it is determined that the proposed alternative(s) meet or exceed the objectives of the applicable minimum standard(s).

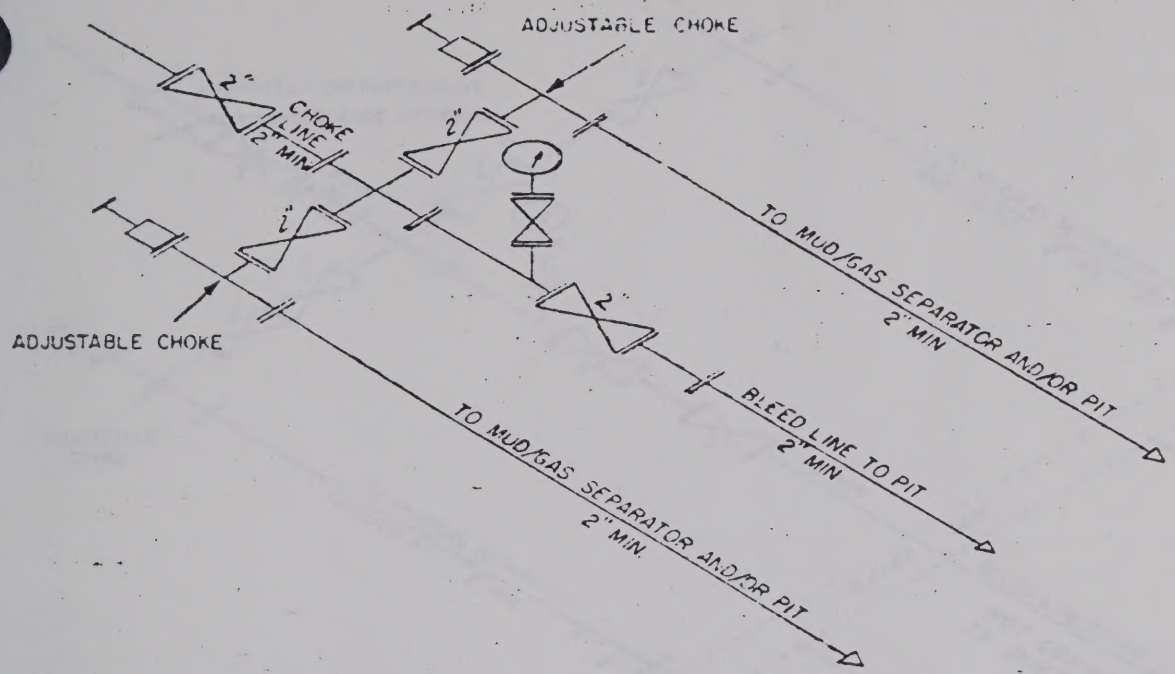
Emergency or other situations of an immediate nature that could not be reasonably foreseen at the time of APD approval may receive oral approval. However, such requests shall be followed up by a written notice filed not later than the fifth business day following oral approval.

ATTACHMENTS

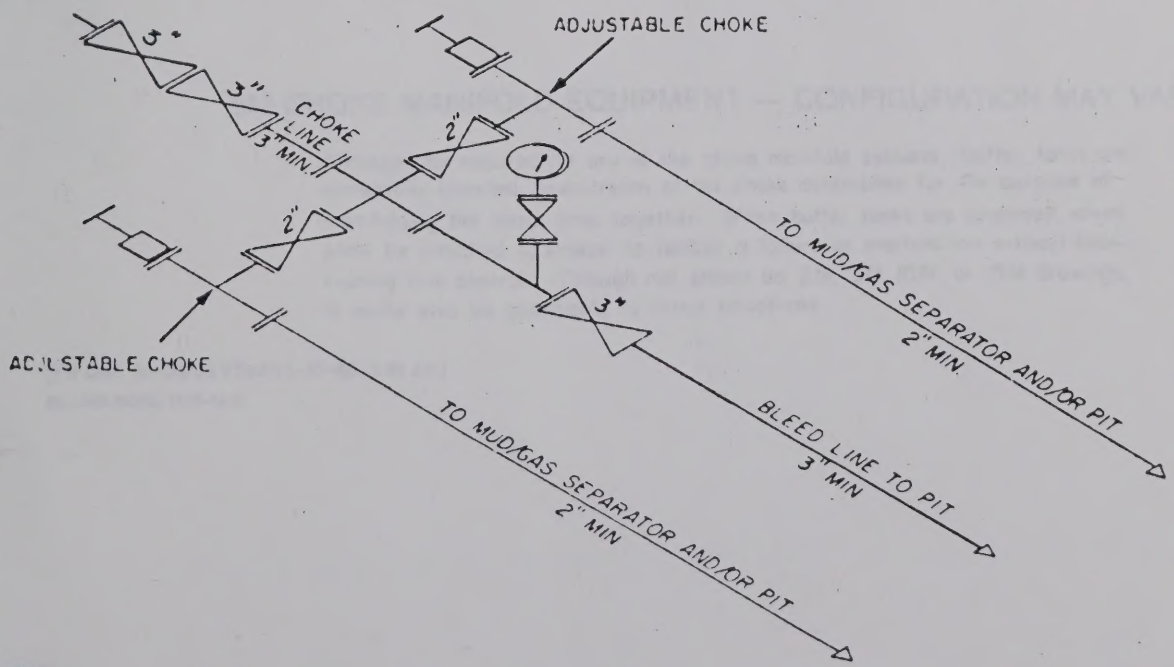
I. Diagrams of Choke Manifold Equipment

II. Sections From 43 CFR Subparts 3163 and 3165 (Not included With Federal Register Publication)

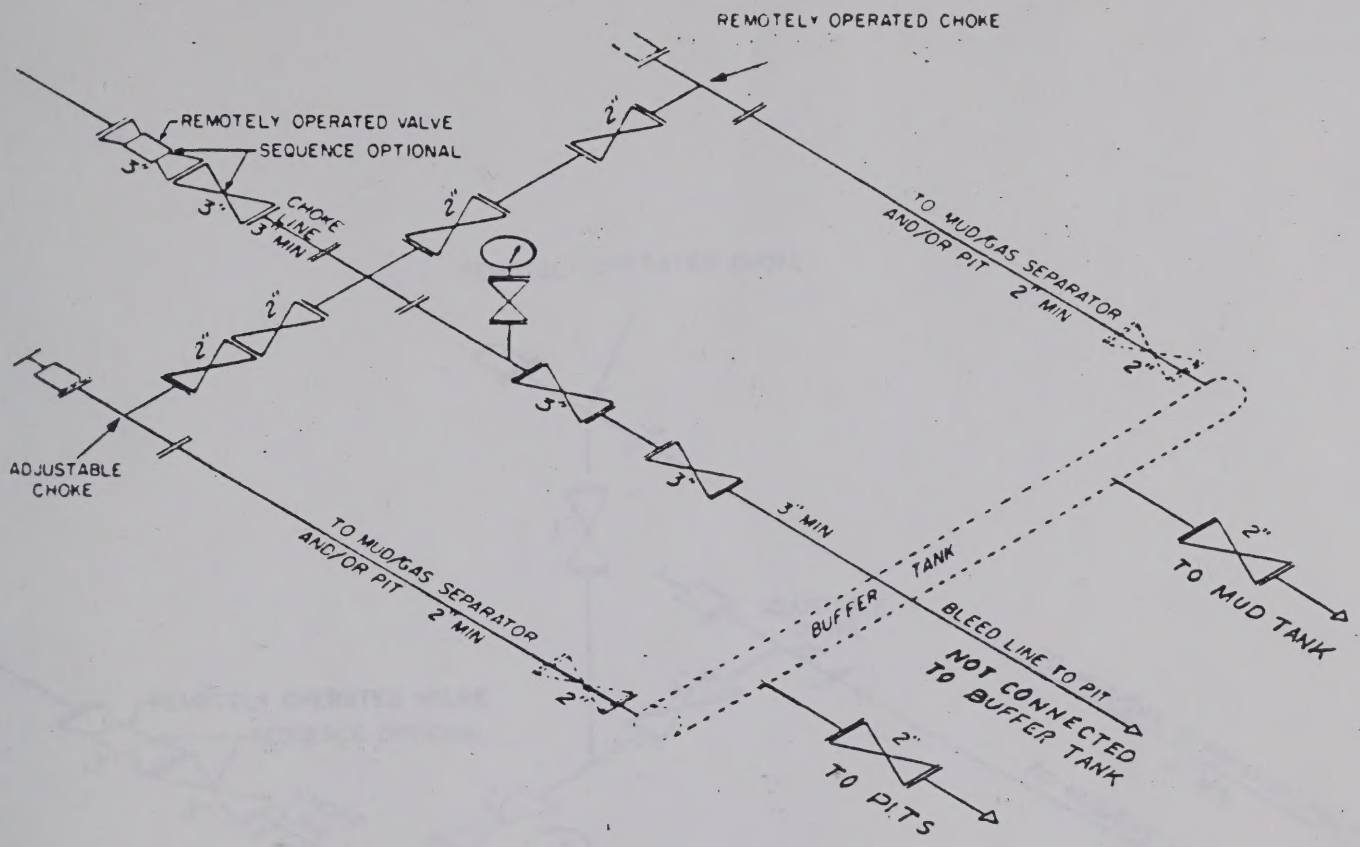
BILLING CODE 4310-84-M



2M CHOKE MANIFOLD EQUIPMENT — CONFIGURATION MAY VARY



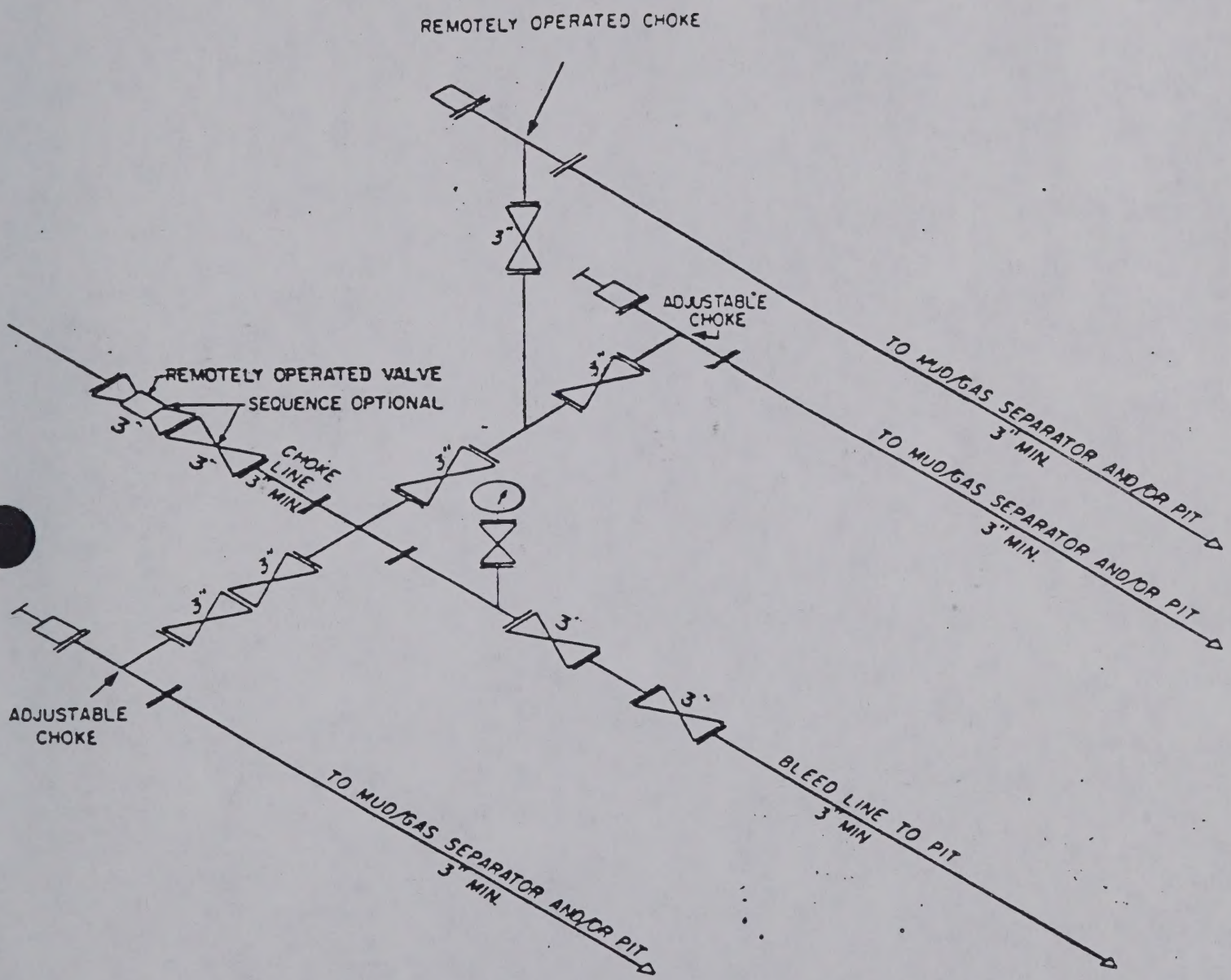
3M CHOKE MANIFOLD EQUIPMENT — CONFIGURATION MAY VARY



5M CHOKE MANIFOLD EQUIPMENT — CONFIGURATION MAY VARY

Although not required for any of the choke manifold systems, buffer tanks are sometimes installed downstream of the choke assemblies for the purpose of manifolding the bleed lines together. When buffer tanks are employed, valves shall be installed upstream to isolate a failure or malfunction without interrupting flow control. Though not shown on 2M, 3M, 10M, or 15M drawings, it would also be applicable to those situations.

[FR Doc. 88-26738 Filed 11-17-88; 8:45 am]
BILLING CODE 4310-84-C



10M AND 15M CHOKE MANIFOLD EQUIPMENT — CONFIGURATION MAY VARY

Page Omitted by FR

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3830, 3850, and 3860

[AA-680-09-4310; Circular No. 2614]

Location of Mining Claims; Assessment Work; Mineral Patent Applications; Amendment Establishing Service Charges and Making Clarifications

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking amends 43 CFR Parts 3830, 3850, and 3860 to establish or increase service charges connected with the filing and recording of documents required by the General Mining Law of 1872 and the Federal Land Policy and Management Act of 1976. The final rulemaking enables the Bureau of Land Management to recover some of the costs of administering its mining law administration program. It also makes other regulatory changes intended to improve the administration of the mining claim program, to increase equity to program users, and to clarify terminology.

EFFECTIVE DATE: January 3, 1989.

ADDRESS: Any suggestions or inquiries should be sent to: Director (680), Mail Stop 3538, Bureau of Land Management, 1800 C St., NW., Washington, DC. 20240.

FOR FURTHER INFORMATION CONTACT: Roger Haskins, (202) 343-8537 or William Condit, (202) 343-8537.

SUPPLEMENTARY INFORMATION: A proposed rulemaking amending certain sections of the regulations at 43 CFR Subparts 3830, 3850, and 3860 was published in the **Federal Register** on June 23, 1988 (53 FR 23720). After the proposal was published, post cards notifying mining claimants that it was available for comment were sent to approximately 60,000 entities in the United States. This outreach effort generated 557 comments, from 420 individuals, 100 businesses in the mining industry, 33 environmental and mining associations, and 4 units of local government. The individuals, businesses, associations, and local governments represent all regions of the United States, but the majority originated from States west of the Mississippi River.

The comments addressed all aspects of the proposed rulemaking. All comments received were given careful consideration and are addressed in the preamble, either as general comments on the rulemaking as a whole or as specific comments connected with particular proposed changes. In general, the correspondents agreed that regulatory and procedural changes to the program for processing and administering mining claims and patents were needed to clarify terminology or increase program efficiency. They generally disagreed, however, with the methods by which the Bureau proposed to increase efficiency, particularly the Bureau of Land Management's (Bureau) proposals to establish or increase service charges (user fees) for the filing of various mining-claim-related documents. Descriptions of the comments and discussions of their disposition are grouped into either the general comments or specific comments sections below.

General Comments

Three comments challenged the Bureau's authority to record mining claims on public lands. Two of them believed that the Bureau should return its recordation function to the counties where the claims are located. This comment cannot be adopted because its adoption is not legally possible. The Bureau is required by section 314 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1744) to record mining claims. That statute requires the owners of unpatented lode or placer mining claims located before October 21, 1976, to file within 3 years after October 21, 1976, the following: (1) A copy of the official record of the notice of location, including a description of the location of the mining claim sufficient to locate the claim on the ground, and (2) a notice of intention to hold the mining claim or an affidavit of assessment work performed on the claim. The statute also requires that the claimholder file a notice of intention to hold the mining claim or an affidavit of assessment work each year after the initial filing and before December 31. Owners of mill sites and tunnel sites must comply with (1), above, under the statute. Under regulations promulgated January 27, 1977, such owners are required to comply with (2). The statute further requires all claims and sites located after the date of enactment to be recorded within 90 days of location and, in order to hold the mining claim or site, that a notice of intention to hold the mining claim or an affidavit of assessment work be filed every calendar year after the year of location.

The statute further states that failure to file either the notice of intent or the assessment work affidavit would constitute an abandonment of the mining claim by the owner, but that the claim would not be considered abandoned if the notice of intent or assessment was defective or late under other Federal laws requiring filing or recording of mining claims, or if the instrument is filed for record by or on behalf of some but not all of the owners of the mining claim or mill site.

The constitutionality of section 314 was challenged in court. On October 24, 1983, the District Court for the District of Nevada declared section 314 of the Federal Land Policy and Management Act (FLPMA) unconstitutional. The United States appealed directly to the United States Supreme Court. Because of this action, on January 31, 1984, all decisions on mining case recordation cases that were considered abandoned and void were suspended at the request of the Director of the Department of the Interior's Office of Hearings and Appeals, pending a Supreme Court decision on the constitutional question.

On April 1, 1985, the Supreme Court upheld the constitutionality of Section 314 of FLPMA in its entirety. (See *United States v. Locke*, 471 U.S. 84, 1985.) In its *de novo* review of BLM's procedures, it also found the Bureau's administrative system for mining claim recordation processing to be reasonable and adequate. Since that date, the Bureau has been implementing the mining claim recordation system with the objective of maintaining accurate mining claim records.

Several comments on the proposed rulemaking disputed 2 statements made in the preamble: (1) That the regulatory proposals were not a major Federal action significantly affecting the quality of the human environment and (2) that the proposed regulatory changes would not have an adverse effect on a substantial number of small entities. These comments argued that the economic effects of the proposed service charge increases would cause significant adverse effects both on the socio-economic environment and on small businesses in the mining industry. Because the proposal to establish a service charge for the annual filing of either an affidavit of assessment work or a notice of intent to hold was the focus of most comments, the discussion below centers on that service charge.

According to Bureau of Land Management records, approximately 85 percent of Federal mining claimants hold 20 or fewer mining claims. According to one comment, California has the lowest claimholder rate, an average of 2.7 claims per claimholder. By contrast, only 1.3 percent of all mining claimants hold more than 200 claims and 0.1 percent hold more than 1,500 claims each. Although there are

exceptions, claimholders holding 1,500 or more claims tend to be medium to large-sized companies, including miners of uranium, precious metals, and base metals.

The proposed rulemaking provided for a $5 per claim per year filing fee on affidavits of annual assessment work and notices of intent to hold. Mining claimants are required by law to do not less than $100 worth of assessment work on or for the benefit of each lode or placer claim each year. Expenditures for mill sites and tunnel sites are necessary as well to maintain their validity. The filing fee would increase the Federally imposed component of the cost of maintaining each claim by not more than 5 percent per year. This increase would amount to $15 for the average California claimant and not more than $100 for the 85 percent of all claimants who hold 20 or fewer claims. Because many claimants seeking to make discoveries on their claims are doing more than the minimum $100 annual labor, their cost increase would be less than 5 percent.

The fee schedule could be considered by some individuals to favor small entities because the new service charges on a small claimholder, one holding 20 claims or less, would be at most $100 per year.

The service charge increases could also benefit small claimholders by reducing the number of what many comments referred to as "paper hangers," individuals who locate large numbers of mining claims for speculative purposes only. According to some comments, these "paper hangers" hold up to 2,000 claims each. The Bureau expects that an elastic response will occur. That is, some claimants holding large numbers of claims are expected to relinquish or drop their more marginal claims rather than pay the new annual filing fee. These lands would then be available for exploration by other individuals.

The response to service charge increases will be inelastic where market demands support the location of claims for a particular mineral commodity, and those claims will not likely be relinquished to avoid the filing fee. In support of this expectation, we note that Nevada counties have recently raised their recording fees for affidavits of assessment work, also charged on a per-claim basis. Numbers of claims filed there have increased significantly, not decreased, despite the increase in recording fees, because of factors such as the increased price of gold and the State's geological favorability for precious metal deposits.

The foregoing discussion is not a substitute for the description and analysis of comments addressing the service charge schedule proposals. That discussion is located at 43 CFR 3833.1–3, below. The data presented above are support for the conclusion that the fee increases would not adversely affect a substantial number of small businesses or create unacceptable socio-economic effects because the burden of the increases would fall equally on all claimholders and is only a small increase in costs of exploration and mining.

Specific Comments

43 CFR 3833.0–5

The proposed rulemaking created the definitions of "relocation" at § 3833.0–5(q) and "amended location" at § 3833.0–5(p) to reduce confusion among mining claimants on which of the terms should be used when recording their mining claims with the Bureau. Approximately 85 percent of those commenting on this section concluded that the proposed definitions further confused mining claimants rather than reducing their confusion. Only 15 percent of those commenting on this section supported the definitions as proposed.

Those opposing the definitions pointed out that they conflicted with established case law, at both the Federal and State levels, and that they posed problems for prospectors in the field. They stated that the definition of "amended notice of location" eliminated the possibility of adding lands to an existing claim. Historically, the comments noted, mining claimants have been allowed to amend their claims to take in additional unappropriated ground. In addition, one comment noted a logical inconsistency within the definition of "amended notice of location". The definition stated that an amended notice could be used to make changes in the position of claim boundary monuments, but could not be used to add lands to a claim. However, changes in boundary position add or remove lands from the claim. As a result of these comments, the final rulemaking revises the definition of "amended notice of location" to allow for the inclusion of additional unappropriated lands.

Opponents of the definition of "relocation" interpreted it to mean that a claimant must waive all rights to a prior claim if he files a new claim. They stated that frequently no definitive distinction could be made between an amendment and a relocation on the ground and that, if the claimant chose incorrectly, he or she could lose all rights to the claim. This would be in conflict with case law in certain States.

The final rulemaking removes the phrase "which is adverse to any former location on the same lands" from the definition of relocation. The purpose of the definition is administrative, that is, the definition is intended to assist Bureau employees in determining whether to assign a new serial number to a relocated claim or to retain the serial number on an amended claim while noting the amendment. It is not the intention of the Bureau to decide whether or not claimants have correctly identified their claims as amended or relocated for the purpose of maintaining title under the mining law. The Bureau's intention is to decide in which set of case files the document belongs.

A few correspondents encouraged the Bureau to accept hybrid claims as legitimate filings. Hybrid claims are combination documents which both amend and relocate a claim at the same time. The comments stated that the filing of such a document gives better protection to claimants if the validity of their claims is challenged in court. The suggestion is not adopted. Acceptance of hybrid claims would involve the setting up of two separate, parallel case files for each claim. Maintaining parallel case files is contrary to Department policy, which was established by several Interior Board of Land Appeal cases (*R. Gail tibbets et al.*, 43 IBLA 210 (1979), as modified by *Hugh B. Fate, Jr. et al.*, 86 IBLA 215 (1985) and *Russell Hoffman (On Reconsideration)*, 87 IBLA 146 (1985)). The principal difficulty in administering parallel files for a claim is that of determining which of the case files constitutes the official record of the claim, if the claim is litigated. Therefore, a hybrid claim, if submitted, will be treated as if it is an amended notice of location and will be adjudicated in connection with the existing mining claim case file of record.

At the suggestion of one comment, the section now contains a definition of "authorized officer." The comment noted that the term was used in many sections of the regulations but was not defined in this subpart.

43 CFR 3833.1–3

The Bureau proposed to establish or increase the established service charges for the following actions: (1) The filing of initial recordations of mining claims and sites and (2) the annual filings of affidavits of assessment work and notices of intent to hold mining claims, amendments to location, and transfers of interest. The service charge for the

filing of an initial claim or site would be increased from $5 to $10 per claim. New service charges of $5 would be imposed each of the annual filings.

This section generated the largest number of comments on the proposed rulemaking. Approximately 90 percent of those commenting stated positions or made suggestions on this proposal. Some comments both stated positions and made suggestions so that the percentages and categories described below may overlap. The comments can be sorted into six categories: (1) Approximately 70 percent of the comments either categorically opposed the fees without stating a reason or stated that they would be a burden and a hardship on the small miner; (2) approximately 15 percent thought that the fees to be imposed should be based on a per-document, rather than a per-claim charge; (3) 4 percent suggested that fees for the annual filing of assessment work should be based on a sliding scale, usually $5 each for the first 10 claims or sites and then 50 cents or $1 each for the rest on the same document; (4) 1 percent suggested discounts for various groups, including small miners and senior citizens; (5) 7 percent were satisfied with the proposal as written; and (6) 2 percent suggested that the proposed fees were too low and recommended fees of up to $100 to record annual filings, plans, and notices, these increased fees to be used to offset the costs of reclamation of public lands which had been mined.

The category one correspondents based their arguments on the filing fees actually being a tax that would force the small miner out of business, and compared the fees to those charged by County Recorders. County Recorder fees were noted to be significantly lower.

Statute and case law make a distinction between taxes and service charges. A tax is a charge imposed by legislatures or other authorities on citizens to pay for public services or to meet the demands of managing a government. The citizens upon whom the taxes are imposed may or may not directly benefit from the services. Service charges are charges imposed on the users of specific programs, and these users will directly benefit from the services provided. Service charges serve a cost-recovery function in that the government or other organization uses the money to defray the cost of providing the service. Taxes are authorized by Federal and State constitutions or related revenue statutes. User fees, at the Federal level, are allowed by Title V of the Independent Offices Appropriation Act (31 U.S.C. 9701). Policies implementing that law require that a charge to recover the costs of program administration be imposed for services that provide special benefits or privileges to identifiable non-Federal recipients above and beyond those accruing to the public at large. The fee may be assessed either as a cost pursuant to an established schedule or as a share of the cost to the performing bureau or office as determined by a formal accounting system.

A detailed analysis of the processing costs of the Bureau for mining claim recordation documents indicated that in Fiscal Year 1987 each claim for which an affidavit of assessment work (or notice of intent to hold) was filed required an expenditure of $7.42. The initial recordation of a claim cost the Bureau $10.13. Because there is a benefit to the public, as well as to the mining claimants themselves, from the maintenance of these records, a portion of the recordation program costs should not be recovered from filing fees. Based on an analysis of public versus mining claimant benefits, $5.00 per claim for annual filings and $10.00 per claim for initial recordation was determined to be the appropriate cost recovery fees that approach but do not exceed actual costs.

The law and its implementing policies allow for exemptions from user fees, but the Bureau has been unable to justify exempting the mining claim recordation program from service charges. In fact, the General Accounting Office and the Department of the Interior's Office of the Inspector General have criticized the Bureau in at least 9 reports and letters in the last 5 years for having no, or very low, service charges for most of its programs. At least 2 reports and 1 letter have focused on the mining recordation program.

The Bureau's processing costs are higher than those of the County Recorder. The County Recorder receives a location certificate or affidavit of assessment work and places the entire page, undifferentiated, into a book. In contrast, the Bureau, as the official recordkeeper of the United States for public lands, receives a location certificate, adjudicates it for land status and legal requirements, and then enters it into the Bureau's data processing system. A separate file must be maintained for each claim. Annual filings of assessments of work and notices of intent to hold mining claims are adjudicated for ownership changes and numbers of claims or sites filed. Separate copies are made for each mining claim or site listed, and each automated record must also be updated. The County Recorder is simply filing a record; the Bureau is processing and recording many changes to a public land record. The additional requirements on the Bureau as a Federal land records agency mean that its processing costs are clearly not comparable to those of the County Recorder.

The category 2 group of comments argued that the County Recorder operates on a per page basis and that the Bureau ought to operate on the same basis. The Bureau of Land Management queried County Recorder Offices in the western States before presenting this proposal for public comment. In at least six States—Colorado, Idaho, Montana, Nevada, South Dakota, and Utah—the fee for recording affidavits of assessment work is charged on a per-claim basis, as opposed to a per-document basis. For example, Utah counties charge $5 for an affidavit of assessment work plus 50 cents for each claim after the first. Although the Bureau could operate on a per-page basis, this procedure would not always recover the costs of processing the document. Some annual filings, for example, contain up to 100 claims or sites per document, and the Bureau is required to adjudicate each claim or site as a separate action and separately enter each into the appropriate case file. The same situation applies to transfers of interest. Charging on a per-page basis would be equivalent, in effect, to giving volume discounts to filers who have multiple claims even though each claim required separate processing. These entities would be charged the same amount as an individual filing one claim. Because the Bureau must recover its processing costs equitably, each filer must be charged on a per-claim, rather than a per-document, basis.

The category 3 comments suggested that service charges on annual filings be imposed on a sliding scale. Sliding scale fees increase the time of administration of individual claims and encourage the filing of fewer documents. The combination of increased administration time and reduced filings would result in revenues that do not recover administrative costs or that would shift the majority of the burden of paying for administering the program to the small miner with only a few claims. To ensure that small businesses do not shoulder an inappropriate share of the burden, fees must be on a per-claim basis. Alternatively, the fees could increase with the number of claims held per claimant so that large entities holding many claims would pay a higher per-

claim share. This idea was rejected as being inequitable.

The category 4 comments suggested discounts for various select groups who use the program, such as small miners or senior citizens. These discounts would significantly increase administrative costs because the special groups would have to be identified initially and then reviewed annually as the filings are made. The reduced revenues could result in failure to recover administrative costs. The proposal would also present numerous practical problems because of the difficulties of defining the special groups. For instance, the term "small miner" could include those individuals or businesses with a "few" claims or those with small, active operations. The term "active" could also present difficulties because the term could include only currently active operations, those active during a certain period within the last 3 to 5 years or some other arbitrary standard.

The category 5 comments supported the proposals as written. Some in the group expressed support for the idea that the increased revenues should remain in the States where they are generated to improve administration of the mining program. This proposal can be implemented to some extent because language in the Fiscal Year 1989 Interior Appropriations Act authorizes the Bureau to place the fees collected by this rulemaking into a special no-year reimbursable account and not into the General Fund. The funds in a no-year account are not returned to the Treasury at the end of the fiscal year. The money is carried over in the account into subsequent fiscal years to be spent as needed. The legislation further requires that all fees collected by this fee schedule and returned to the Bureau in Fiscal Year 1989 and later years be spent only in the Mining Law Administration Program to improve the Bureau's record system and to expand and improve its overall activities in the mining law administration program. Because of the close linkage to the cost generating activities in each State, the funds generated in any State will likely to be returned to that State. It is not feasible to mandate annual accounting or budget requirements in the regulations, however.

One of the correspondents supporting the service charges based her support upon the canceled check serving as evidence that the service charges had been paid and that the Bureau had received the documents sent. The Bureau would take this suggestion one step further and strongly encourage claimholders to send in their annual filings by certified mail with a return receipt requested, further protecting them against loss of their claims because of alleged losses of the annual filing documents by the Bureau after their receipt from the U.S. Mail. A return receipt card may serve as evidence that the documents were received on time, overturning the presumption of regularity in the processing of Bureau records. One comment estimated that 10 percent of the notices sent were lost in the mail.

The Bureau also strongly encourages claimholders to use the serial numbers of the claims for which filings are made each year on the filings themselves. This practice will reduce the number of incorrect credits given for payments made for the mining claims and will prevent a claim from being lost due to confusion over similar claim names or owner surnames.

The category 6 comments supported greatly increased filing fees to permit the Bureau to reclaim lands disturbed by previous mining actions and to operate a thorough enforcement/bonding program. The fees suggested were up to 1,000 percent above those proposed.

The law does not permit an agency to recover more than its actual costs. Fees collected in excess of expenditures are legally considered a tax. The Bureau has no power to tax individuals or groups without express Congressional legislative authority. Because the Bureau does not have taxing authority, this proposal cannot be adopted.

One additional proposal in this section drew comments. This proposal was the provision that, after June 1, 1989, any filings not accompanied by the appropriate filing fee would be considered fatally defective and would be returned to the sender without further action. The result would be that the claim was considered abandoned. Some comments suggested that a grace period be given to "cure" the defect of the lack of a filing fee or of the right amount of a fee. The comments stated that no fee or an incorrect fee should be correctable without the disastrous consequence of losing a claim with no right of appeal. Based on these comments, the final rulemaking continues a 30-day grace period for curing the defect of no fee or an insufficient fee until January 1, 1991. After that date, by which time claimants should be accustomed to the requirement, filings accompanied by insufficient or no fees will be refused by the Bureau. This proposal has been renumbered as 43 CFR 3833.1–4 to avoid confusion between the fees mentioned in 43 CFR 3833.1–3 and the date when non-payment of fees becomes a non-curable defect.

43 CFR 3833.2

The proposed rulemaking amended 43 CFR 3833.2–1 to reflect the fact that new mining claims, mill sites, and tunnel sites could not be located in units of the National Park System. One comment supported the proposal. Several others stated that the proposal was not necessary because it duplicated provisions of the regulations relating to the National Park Service at 36 CFR Part 9. In addition, a few argued that units of the National Park System should be open to mineral location and development.

The final rulemaking retains the language of the proposed rulemaking. The Mining in the Parks Act of September 28, 1976 (90 Stat. 1342), prohibits mineral location and development in units of the National Park System. Therefore, the suggestion that units of the National Park System be open to mineral location and development cannot be adopted. The intent of the regulations is to reinforce the statutory prohibition against mineral location in National Parks. The regulatory provisions of the National Park Service relevant to the mining laws are referenced in these regulations to assist prospectors and miners who might not have access to or knowledge of regulations relating to the National Park Service.

Two comments noted an ambiguity in language at 43 CFR 3833.2–2(b) with respect to the phrase "between January 1, 1978, and October 22, 1979." The correspondents could not determine whether or not the beginning and ending dates were included. The final rulemaking changes the language to clarify that the beginning and ending dates are included in the provision.

Two comments responded to the proposed language in 43 CFR 3833.2–2(b) requiring that notices of intention to hold or evidence of annual assessment work be filed on or before December 30 of each calendar year after 1979. The comments suggested December 31 as an alternative date. The final rulemaking retains the December 30 date for filing because that date is set by the Federal Land Policy and Management Act of 1976.

One of the comments pointed out that notices of intention to hold mill sites and tunnel sites are not filed with County Recorders. Notices of intention to hold mining claims are the only notices filed with County Recorders. The final rulemaking changes the language of § 3833.2–2(c) to reflect this fact.

43 CFR 3833.4

A few comments addressed the proposal in this section to make the failure to file information required by a decision of the authorized officer a cause for voiding, and considering abandoned, a mining claim, mill site, or tunnel site. The correspondents suggested that the information failure should be considered a curable defect and that the decision should be appealable. The language of the final rulemaking makes the suggested change and allows individuals to appeal the voiding of claims and sites for failure to file information requested in a decision. If the Bureau is upheld on appeal, the claim would be conclusively deemed abandoned and void.

43 CFR 3833.5

The proposed rulemaking eliminated the so-called "diligent search" requirement, whereby the Bureau made a thorough search to find the whereabouts of a mining claimant before administratively taking adverse action on the claimholder's claim. The final rulemaking eliminates the diligent search requirement for administrative decisions of the authorized officer but adds language to clarify that the diligent search requirement continues for mineral contest actions. This language is clarified in response to 3 comments, which addressed the possible elimination of the requirement for a "diligent search" for mineral contests.

43 CFR 3852.2

Numerous comments addressed this section, which would impose a service charge of $50 on petitions for the deferment of annual assessment work. Eight comments opposed the service charge as being a hardship on small miners and suggested that Congress appropriate the money to administer the mining program through appropriations. Six comments supported the proposal.

The actions involved in processing a petition for deferment of annual assessment work are as follows: A land law examiner receives the petition, evaluates it by examining the facts and law in the matter, and then issues a decision granting or denying the petition. The Bureau's estimate of the actual time spent by a land law examiner in processing a petition for deferment costs approximately $25 per petition. The proposed $50 fee is reduced to $25 by this final rulemaking to reflect the approximate costs of processing this type of document. As discussed under 43 CFR 3833.1–3 above, the Bureau is obligated by statute and policy to recover the costs of administering its programs. This final rulemaking therefore adopts a service charge of $25 for each petition for deferment of assessment work.

43 CFR 3862.1–2

The proposed rulemaking increased the filing fee for a patent application from $25 to $250 per application and from no fee to $50 for each additional claim or site in the application. There were 24 comments on the section, with six supporting the increase and 18 opposed. Those opposing the increase stated that it was a hardship on small miners, that it was too high, or that it should only be collected if the patent was granted.

The proposed fee increase is another cost recovery measure. The fee increase is not unreasonable, considering the costs of providing the benefits obtained in the patent process, required by law to be recovered. Under the General Mining Law of 1872, as amended (30 U.S.C. 22 *et seq.*), the mineral industry could obtain a mineral patent to the lands under the mining claim or site, a deferment of assessment work, and a forum to challenge rival locators over rights of discovery or the mineral character of the lands.

The Bureau, in order to fulfill the responsibility of the Secretary of the Interior to grant or deny these claimed or asserted rights, maintains a staff of Land Law Examiners, sometimes called adjudicators, in each State Office, and mineral examiners in each district or area office.

The land law examiners process patent applications by assuring that all required title work complies with Departmental standards, that the proper affidavits of compliance are submitted, that the mineral survey is in order, and that the application has been advertised in the legal section of local newspapers. If all the preceding requirements are met, the Bureau issues the first half of the mineral entry final certificate.

After the mineral entry final certificate is issued, the mineral examiner visits the mining claim or site covered by the application. The examiner maps the geology, samples the mineral deposits, and verifies the mineral survey and improvements upon the mining claim or site. The information collected by the mineral examiner is then evaluated to determine if the mining claim contains an economically extractable mineral commodity. If so, the examiner recommends that the patent issue. If not, the examiner recommends that a mineral contest action be initiated against the mining claims in the administrative law court of the Department of the Interior. A hearing is held before an Administrative Law Judge to determine whether the claims are valid or null and void.

The Bureau incurs processing costs whether or not the patent is granted. Therefore, the final rulemaking does not adopt the suggestion that the fee be imposed only if the patent is granted. The service charge on patent applications is, by this rulemaking, set at $250 per application and the first claim contained in the application and $50 for each additional claim or site thereafter in the application.

The principal authors of this rulemaking are Roger Haskins and William Condit of the Division of Mining and Salable Minerals, assisted by the staff of the Division of Solid Mineral Leasing and the staff of the Office of Legislation and Regulatory Management, Bureau of Land Management.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). See the discussion under General Comments for the rationale for this determination.

The information collection requirements contained in 43 CFR Part 3833 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1004–0114.

List of Subjects in 43 CFR Parts 3830, 3850, and 3860

Mineral royalties, Mines, Public lands—Mineral resources, Reporting and Recordkeeping requirements.

Under the authority of the General Mining Law of May 10, 1872 (30 U.S.C. 22), section 2478 of the Revised Statutes, as amended (43 U.S.C. 1201), the Independent Offices Appropriations Act (31 U.S.C. 9701), and sections 304, 310, and 314 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1734, 1740, and 1744), the regulations at Subpart 3830, Group 3800, Subchapter C, Chapter II of Title 43 of the Code of Federal Regulations are amended as set forth below:

James E. Cason,

Acting Assistant Secretary of the Interior.

October 14, 1988.

PART 3830—[AMENDED]

1. The authority citation for Part 3830 is added to read:

Authority: 30 U.S.C. 22, sections 2319 and 2478 of the Revised Statutes, as amended (43

U.S.C. 1201), 31 U.S.C. 9701, 16 U.S.C. 1901, 1907, and 43 U.S.C. 1734, 1740, 1744, and 1782.

§ 3833.0-3 [Amended]

2. Section 3833.0-3(d) is amended by removing the citation "(31 U.S.C. 483a)" and replacing it with the citation "(31 U.S.C. 9701)".

§ 3833.0-5 [Amended]

3. Section 3833.0-5 is amended by:

A. Revising paragraph (j) to read:

(j) "Affidavit of assessment work" means the instrument required under state law that certifies that assessment work required by 30 U.S.C. 28 has been performed on, or for the benefit of, a mining claim or, if state law does not require the filing of such an instrument, an affidavit evidencing the performance of such assessment work; and

B. Adding new paragraphs (p), (q), (r), and (s) to read:

(p) "Amended location" means a location that is in furtherance of an earlier valid location and that may or may not take in different or additional unappropriated ground. An amendment may:

(1) Correct or clarify defects or omissions in the original notice or certificate of location; or

(2) Change the legal description, mining claim name, position of discovery or boundary monuments, or similar items.

An amended location notice relates back to the original location notice date. No amendment is possible if the original location is void.

(q) "Relocation" means the establishment of a new mining claim, mill site, or tunnel site. A relocation may not be established by the use of an "amended location notice", but requires a new original location notice or certificate as prescribed by state law.

(r) "Annual filing" means either an affidavit of assessment work or a notice of intention to hold the mining claim, mill site, or tunnel site.

(s) "Authorized officer" means any employee of the Bureau of Land Management to whom authority has been delegated to perform the duties described in this subpart.

4. Section 3833.1-1 is amended by:

A. Revising the title to read:

§ 3833.1-1 Recordation of mining claims, mill sites and tunnel sites located on or before October 20, 1976.

B. By adding the figure "(a)" at the beginning of the existing paragraph in that section; and

C. Adding a new paragraph (b) to read:

(b) No unit of the National Park System remained open to mining claim location after September 28, 1976. All mining claims, mill sites, and tunnel sites located in a unit of the National Park System on that date were required to be recorded with the National Park Service on or before September 28, 1977, or they were, by operation of law, deemed conclusively to be abandoned and void.

5. Section 3833.1-3 is revised to read:

§ 3833.1-3 Service charges.

(a) All service charges shall be payable by United States currency, postal money order, or negotiable instrument payable in United States currency and shall be made payable to the Department of the Interior—Bureau of Land Management.

(b) Each mining claim, mill site, or tunnel site filed for recordation shall be accompanied by a nonrefundable service charge of $10.00.

(c) Annual filings submitted pursuant to § 3833.2 of this title shall be accompanied by a nonrefundable service charge of $5.00 for each mining claim, mill site, or tunnel site.

(d) Amendments to a previously recorded notice or certificate of location shall be accompanied by a nonrefundable service charge of $5.00 for each mining claim, mill site, or tunnel site.

(e) Transfers of interest filed pursuant to § 3833.3 of this title shall be accompanied by a nonrefundable service charge of $5.00 for each mining claim, mill site, or tunnel site affected.

§ 3833.1-4 Effective date of service charges.

(a) *Prior to January 1, 1991.* Filings that are not accompanied by the service charges set forth in § 3833.1-3 of this title shall be noted as being recorded on the date received provided that the claimant submits the proper service charge within 30 days of receipt of such deficiency notice by the authorized officer. Failure to submit the proper service charge shall cause the filing to be rejected and returned to the claimant/owner.

(b) *Beginning January 1, 1991.* Filings that are not accompanied by the proper service charges set forth in § 3833.1-3 of this title shall not be accepted and will be returned to the claimant/owner without further action.

6. Revise § 3833.2 to read:

§ 3833.2 Annual filings.

7. Section 3833.2-1 is revised to read:

§ 3833.2-1 National Park System lands.

(a) For all mining claims, mill sites, and tunnel sites located within a unit of the National Park System that was recorded on or before September 28, 1977, an annual filing shall be submitted to the proper BLM office on or before December 30 of each succeeding calendar year thereafter.

(b) Even though the National Park Service, except under certain limited circumstances described in 36 CFR Part 9, Subpart A, does not permit surface disturbing actions to occur in units of the National Park System, a notice of intent to hold should be filed for mining claims and sites located within these units. If the owner has received National Park Service approval for surface disturbing actions under 36 CFR Part 9, Subpart A, either a notice of intent or an affidavit of assessment work, as appropriate, should be filed.

(c) The provisions of this section shall apply to all mining claims, mill sites, and tunnel sites included in a unit of the National Park System because of an enlargement of the said unit after September 28, 1976.

(d) Evidence of annual assessment work for mining claims, mill sites, and tunnel sites located in a unit of the National Park System shall be in the form prescribed by § 3833.2-4 of this Title. A notice of intention to hold such a claim or site shall be in the form prescribed in § 3833.2-5 of this title.

(e) The authorized officer shall forward copies of annual filings on mining claims, mill sites, and tunnel sites located within a unit of the National Park System to the proper National Park Service office.

§§ 3833.2-2, 3833.2-3, 3833.2-4 [Redesignated as §§ 3833.2-4, 3833.2-5, 3833.2-6]

8. Redesignate §§ 3833.2-2, 3833.2-3, 3833.2-4 as §§ 3833.2-4, 3833.2-5, and 3833.2-6, respectively.

9. New §§ 3833.2-2 and 3833.2-3 are added to read:

§ 3833.2-2 Other Federal lands.

Unpatented mining claims, mill sites, and tunnel sites located on Federal lands which are not within a unit of the National Park System are subject to the following annual filing requirements:

(a) If a mining claim, mill site, or tunnel site located on or before October 20, 1976, was recorded in the proper BLM office prior to January 1, 1978, a notice of intention to hold or evidence of annual assessment work shall be filed in the proper BLM office on or before December 30, of the calendar year following the calendar year of its recordation, and of each calendar year thereafter.

(b) All owners of mining claims, mill sites, or tunnel sites located on or before October 20, 1976, and recorded in the

proper BLM office on or after January 1, 1978, and on or before October 22, 1979, shall have filed a notice of intention to hold or evidence of annual assessment work in the proper BLM office on or before October 22, 1979, and on or before December 30 of each calendar year after 1979.

(c) Owners of mining claims, mill sites, and tunnel sites located on or after October 21, 1976, shall file a notice of intention to hold or evidence of annual assessment work in the proper BLM office on or before December 30 of the calendar year following the calendar year of the location of the mining claims, mill site, or tunnel site.

(d) Evidence of annual assessment work shall be in the form prescribed in § 3833.2–4 of this title. A notice of intention to hold shall be in the form prescribed in § 3833.2–5 of this title.

§ 3833.2–3 Consistency between the Federal Land Policy and Management Act and the General Mining Law of May 10, 1872.

(a) The Federal Land Policy and Management Act requires that a notice of intention to hold or evidence of annual assessment work be filed on or before December 30 of each calendar year following the calendar year in which the mining claim. mill site, or tunnel site was located. To comply with the requirements of the Act for mining claims, mill sites, or tunnel sites located between September 1 and December 31 of a given calendar year, the claimant shall submit an annual filing on or before December 30, of the following calendar year for each location to prevent the mining claim, mill site, or tunnel site from being declared abandoned and void by operation of law.

(b) Evidence of assessment work filed under this subpart between January 1 and the following December 30 of the same calendar year shall be deemed to have been filed during that calendar year, regardless of what assessment year that work fulfilled under State law.

(c) Notice of intention to hold a mining claim, mill site, or tunnel site may be filed at the election of the owner, regardless of whether the assessment work has been suspended, deferred, or not yet accrued. However, the owner shall have filed with the Bureau of Land Management the same documents which have been or will be recorded with the local recordation office. There is no requirement to file a notice of intent to hold for a mill site or a tunnel site with the local recordation office. A notice of intention to hold a mining claim, mill site, or tunnel site shall be effective only to satisfy the filing requirement for the calendar year in which the notice is filed. The filing of a notice of intention to hold with the Bureau of Land Management shall not relieve the owner of complying with Federal and State laws pertaining to the performance of assessment work.

§ 3833.4 [Amended]

11. Section 3833.4(b) is amended by removing the phrase "§§ 3833.1–2(b), 3833.2–1(c), 3833.2–2(a) and (b), or 3833.2–3(b) and (c)" and replacing it with the phrase "§§ 3833.2–4 (a) and (b), and 3833.2–5 (a) and (b)", and by removing the second and third sentence of the paragraph and adding a new sentence to read "Failure to file the information requested by the decision of the authorized officer shall result in the mining claim, mill site, or tunnel site being deemed conclusively to be abandoned and it shall be void."

§ 3833.5 [Amended]

12. Section 3833.5 is amended by:

A. Amending paragraph (d) by removing everything after the first sentence of the paragraph and replacing it with "As provided in Subpart 1810 of this title, all owners of record with the Bureau of Land Management shall be personally notified and served by certified mail, return receipt requested, sent to their last address of record. Such owners shall be deemed to have been served if the certified mail was delivered to that address of record, regardless of whether the certified mail was in fact received by them. The provisions of this subpart shall not be applicable to procedures for public notice required under Part 3860 of this title with respect to mineral patent applications and to the procedures given in 43 CFR 4.450–5 concerning service in mineral contest actions."; and

B. By adding a new paragraph (h) to read:

* * * * *

(h) Any party adversely affected by a decision of the authorized officer made pursuant to the provisions of this Subpart shall have a right of appeal pursuant to Part 4 of this title.

PART 3850—ASSESSMENT WORK

1. An authority citation is added to read:

Authority: 30 U.S.C. 22 et seq.

Subpart 3852—Deferment of Assessment Work

§ 3852.2 [Amended]

2. The last sentence of § 3852.2(a) is revised to read:

(a) * * * Each petition shall be accompanied by a $25 nonrefundable service charge.

* * * * *

PART 3860—MINERAL PATENT APPLICATIONS

1. An authority citation is added to read:

Authority: 30 U.S.C. 22 et seq.

Subpart 3862—Lode Mining Claim Patent Applications

2. Section 3862.1–2 is revised to read:

§ 3862.1–2 Service charge.

Each Mineral Patent Application shall be accompanied by a nonrefundable service charge of $250 per application and the initial mining claim or site plus $50 for each additional mining claim or site contained within the application.

[FR Doc. 88–27686 Filed 11–30–88; 8:45 am]

BILLING CODE 4310–84–M

#2615

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3480

[AA-660-09-4120-02; Circular No. 2615]

Coal Exploration and Mining Operations Rules; Diligence Requirements

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking sets forth the regulations of the Department of the Interior for the administration of section 7(a) and section 39 of the Mineral Leasing Act (30 U.S.C. 207(a) and 30 U.S.C. 209 (1982)). It amends the existing regulations at 43 CFR 3483.3 to provide that, if suspension of operations and production of a coal lease has been approved or directed under section 39 of MLA, the 10-year production period set in section 7(a) of MLA will be extended by an amount of time equal to the duration of the suspension of operations and production.

EFFECTIVE DATE: January 12, 1989.

ADDRESS: Inquiries or suggestions should be sent to: Director (660), Bureau of Land Management, Room 3411, Main Interior Building, 1800 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Paul W. Politzer (202) 343-7722,
or
Allen B. Agnew (202) 343-7753.

SUPPLEMENTARY INFORMATION: A proposed rulemaking containing revisions to two paragraphs of 43 CFR 3483.3 was published in the Federal Register on August 26, 1988 (53 FR 32831), with a 30-day comment period. During that comment period, comments were received from seven sources, with 2 coming from businesses, 3 from associations, 1 from an attorney, and 1 from a Federal Agency. All of the comments were given full consideration during the preparation of this final rulemaking. The Supplementary Information preamble to that proposed rulemaking is incorporated herein in its entirety, to the extent not modified by this Supplementary Information.

This final rulemaking provides that, upon approval of a suspension of operations and production under section 39 of the Mineral Leasing Act, the regulatory 10-year diligent development period shall be extended for a period of time equal to the suspension.

In general, all comments received were favorable to the changes proposed in the rulemaking. None of the comments suggested changes in the provisions amended in the proposed rulemaking, and the proposed rulemaking is adopted without amendment in this final rulemaking.

One comment concerned the adequacy of the Solicitor's conclusion that the Department of the Interior has defined the diligent-development requirement of section 7(b) of the Mineral Leasing Act to equate to the requirement in section 7(a) that the lease be producing at the end of 10 years. The comment stated that the definition of diligent development period should "clearly specify that it is the same 10-year period as referred to in section 7(a)." This suggested amendment is unnecessary at this time. The 10-year diligent development period and the 10-year production period of section 7(a) for new Federal coal leases have been equated since the Department of the Interior first proposed regulations to implement the Federal Coal Leasing Amendments Act of 1976 (41 FR 45571, October 15, 1976). In the 1982 amendments to the regulations, this concept was extended to pre-Federal Coal Leasing Amendments Act Federal coal leases as they became subject to that Act. The Bureau of Land Management is currently reviewing the coal exploration and mining operations regulations, and related portions of 43 CFR Group 3400. This comment will be considered during that review.

The comment continued that a second area of concern related to whether the effects on the 10-year diligent development period of a *force majeure* suspension pursuant to section 7(b) of MLA and a suspension of operations and production pursuant to section 39 of MLA are identical. *Force majeure* suspensions are not the subject of this final rulemaking. However, this question will be considered during the review of the 43 CFR Group 3400 regulations mentioned above.

One comment related to the issue of whether or not a lessee must have been in operation in order to qualify for a Section 39 suspension of operations and production, stating: "In reviewing the decisions in the cases of *Copper Valley Machine Works, Inc.* v. *Andrus*, 653 F.2d 595 (D.C. Cir. 1981) and *Getty Oil Co.* v. *Clark*, 614 F. Supp. 904 (D.C. Wyo. 1985), it appears that there is a distinction in the authority of the Secretary depending upon whether or not actual operations are being conducted on a lease prior to the Section 39 suspension. It would appear, under these decisions, that if no development exists then the Secretary must 'direct' a suspension [of operations and production] in the interest of conservation in order for the Section 39 suspension to apply. On the other hand, if operations have commenced, then it would appear that the lessee can apply for and obtain approval of a suspension and the suspension will serve to suspend all other terms and conditions of the Federal coal lease."

Section 39 of MLA is silent as to when a suspension of operations and production may be granted or directed. In the cases cited in the comment, no operations were occurring on the Federal coal leases. In the *Copper Valley* case, the court construed a stipulation, placed by the Bureau of Land Management on the permit to drill an oil well, as a directed suspension. In the *Getty* case, the lessee requested a suspension of operations and production while the Bureau of Land Management prepared an environmental impact statement on an application for a permit to drill an oil well. Thus, the timing of the suspension of operations and production in relation to commencement of operations has no bearing on the manner in which a Federal coal lease is suspended. *Copper Valley*, supra, at 600.

One comment stated that "the proposed rulemaking appears to be effecting a change in the regulations * * * that should have no impact on the scope or the result of the suspension of operation [sic] and production for conservation purposes." The comment continued that the Solicitor's Opinion (M-36958, July 14, 1988) "could be construed to allow leases to be suspended for 'conservation purposes' prior to the initiation of production * * * and potentially would pave the way for a huge loophole in the diligent development requirements * * *. This situation would be contrary to the intent of Congress * * *." The comment concluded that the final regulation "must clarify that the suspension of operations [and production] for conservation purposes only applies to

producing mines." The Department has consistently declined to allow Section 39 suspensions of operation and production for speculative purposes to be directed or approved. *Mountain States Resources Corp.*, 84 IBLA 616, June 12, 1988. The intent of Congress is to discourage speculation on Federal coal leases. In general, a Section 39 suspension of operations and production is only warranted where operations have commenced and production has occurred. However, there will be situations where a Federal coal lease qualifies for a suspension of operations and production even though operations have not commenced, similar to the Federal oil and gas lease suspension of operations and production described in the *Getty* case.

The Department, with judicial approval, has construed the term "conservation" to include not only maximizing recovery and avoiding or minimizing waste or loss of the leased mineral resource, but also avoiding or minimizing damage to other natural resources, such as wildlife, water quality, air quality, and other minerals. An example would be where the development of an existing Federal coal lease is totally dependent upon the issuance, or lack thereof, of an adjacent Federal coal lease and the issuance decision on the adjacent Federal coal lease is dependent on preparation of an environmental impact statement. The environmental impact statement would be prepared to ensure that, if the adjacent lease is issued, the impacts of any operations on both leases will be mitigated. A section 39 suspension of operations and production, in the interest of conservation of other resources, would be warranted for the duration of the preparation of the environmental impact statement.

One comment stated that under existing regulations, "as diligent development dates for these leases come up * * * there will be no alternative in the present market to their forfeiture. If one lease in a larger reserve is forfeited, the potential for development of other leases in that reserve will be even further reduced. The United States, however, will in no way be benefited by having that lease back, since no one else will want it or be able to develop it with economic feasibility." Another comment stated that: "It is virtually impossible in the current regulatory environment, particularly with existing coal markets, to meet the ten year production requirements." Agencies in the Department of the Interior have addressed speculative holding of Federal coal leases many times, and disagree with the presumption that economics or markets are included in the term "in the interest of conservation of natural resources." This issue was addressed in Solicitor's Opinion M-36951 (92 I.D. 537, 540 (1985)). In enacting the Federal Coal Leasing Amendments Act of 1976, Congress sought to eliminate speculative holding of Federal coal leases. When the Act was enacted, only about 60 of the 533 outstanding Federal coal leases were in production. Although the total number of Federal coal leases approached 640 in the early 1980's, during fiscal year 1987 only 120 of the remaining 536 Federal coal leases were producing. Congress identified several reasons for this situation. First, the Secretary of the Interior had failed to enforce strictly the statutory coal lease conditions of diligent development and continued operation. Second, the availability of Federal coal leases on a noncompetitive basis under the prospecting permit/preference-right leasing system had enabled energy resource speculators to enter the market for Federal coal in large numbers and at little cost.

Three provisions of the Federal Coal Leasing Amendments Act of 1976 were designed to discourage speculation in nonproducing Federal coal leases. First, subject to valid existing rights, the noncompetitive leasing system was terminated. Second, Section 6 of the Act amended Section 7 of the Mineral Leasing Act to require the termination of new leases (and old leases readjusted or otherwise made subject to the 1976 Amendments) not producing coal in commercial quantities in 10 years. Third, in Section 3 of the 1976 Amendments, Congress added section 2(a)(2)(A) to the Mineral Leasing Act to prohibit lessees that hold Federal coal leases for 10 years after 1976 and are not then producing coal in commercial quantities from acquiring a lease or leases under the Mineral Leasing Act. The intent of Congress cannot be circumvented by allowing across-the-board suspensions for lessees that cannot find an economic market, as the comment implies. As discussed earlier, there may indeed be specific situations which may warrant a Section 39 suspension of operations and production for a nonproducing lease. However, "economic feasibility" and "market" are not within the meaning of the phrase "in the interest of conservation." The phrase "in the interest of conservation" refers to natural resources, as described in the *Copper Valley* decision, and the test is required to be satisfied on a case-by-case basis.

This final rulemaking makes it clear that, when warranted and either directed or approved, the 10-year diligent development period will be extended by a period of time equal to the duration of a Section 39 suspension of operations and production.

The principal author of this final rulemaking is Allen B. Agnew, Branch of Technical Support, Division of Solid Mineral Operations, assisted by other Washington Office staff, staff of the Division of Legislation and Regulatory Management, all of the Bureau of Land Management, and staff of the Office of the Solicitor, Department of the Interior.

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291, that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), and that it will not have a substantial direct effect on the States, the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government under Executive Order 12612.

The economic impacts of this final rulemaking will not exceed the economic threshold of Executive Order 12291 and the rulemaking will affect all Federal coal lessees equally, regardless of their size.

This final rulemaking contains no information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 43 CFR Part 3480

Coal, Government contracts, Intergovernmental relations, Mines, Public lands—mineral resources, Reporting and recordkeeping requirements.

Under the authorities cited below, Part 3480, Group 3400, Subchapter C, Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below:

PART 3480—[AMENDED]

1. The authority citation for Part 3480 continues to read:

Authority: The Mineral Leasing Act, as amended (30 U.S.C. 181 *et seq.*); the Mineral

Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359); the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201, *et seq.*); the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470, *et seq.*); the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*); the Act of March 3, 1909, as amended (25 U.S.C. 396); the Act of May 11, 1938, as amended (25 U.S.C. 396a–396g); the Act of February 28, 1891, as amended (25 U.S.C. 397); the Act of May 29, 1924 (25 U.S.C. 398); the Act of March 3, 1927 (25 U.S.C. 398a–398e); the Act of June 30, 1919, as amended (25 U.S.C. 399); R.S. 441, as amended (43 U.S.C. 1457); the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 471, *et seq.*); the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321, *et seq.*); and the Freedom of Information Act (5 U.S.C. 552).

§ 3483.3 [Amended]

2. Section 3483.3(b)(1) is amended by removing from where it appears in the second sentence the phrase ", except the diligent development period,".

3. Section 3483.3(b)(3) is amended by inserting the phrase ", including the diligent development period," between the words "term" and "of" in the first line of the paragraph.

James R. Cason,

Deputy Assistant Secretary of the Interior.

November 4, 1988.

[FR Doc. 88–28568 Filed 12–12–88; 8:45 am]

BILLING CODE 4310–84–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 43

[CC Docket No. 87–134; FCC 88–357]

Communications Common Carriers; Reporting and Recordkeeping Requirements

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Federal Communications Commission amends §§ 43.42 and 43.43 of its Rules so as to reduce the number of communications common carriers who must file with the Commission the reports specified in those sections.

EFFECTIVE DATE: January 9, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Herbert H. Wilson, Jr., Accounting and Audits Division, Common Carrier Bureau, Federal Communications Commission, Washington, DC 20554, (202) 632–7500.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order* (CC Docket No. 87–134), FCC 88–357, adopted November 3, 1988 and released December 2, 1988. The full text of the Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

The Notice of Proposed Rulemaking in this proceeding, 2 FCC Rcd 3878, was published in the **Federal Register** at 52 FR 26,704, June 30, 1987.

SUMMARY OF THE REPORT AND ORDER: Section 43.42 of the Commission's Rules previously required that all communications common carriers which had operating revenues for the proceeding year in excess of $1,000,000 to file specified reports on their employee pension and benefit plans. The Commission amends Subsection 43.42(a) to require the filing of these reports only by carriers which the Commission determines to be "dominant" carriers and which have operating revenues for the preceding year in excess of $100,000,000.

Section 43.43 previously required all carriers which had operating revenues for the preceding year in excess of $1,000,000 to file reports as specified in that section before making any changes in the depreciation rates applicable to their operated plants. Carriers for which the Commission has previously prescribed depreciation rates may not make changes in such rates unless the charges are also prescribed by the Commission. The Commission amends § 43.43(a) so as to apply these requirements only to carriers which the Commission determines to be "dominant" carriers and which have operating revenues for the previous year in excess of $100,000,000.

All comments received favored the increase in the threshold filing level. The rule changes only address the designation of which carriers must file the reports specified in §§ 43.42 and 43.43. No changes are made in the contents of the reports themselves. The Commission rejected a proposal that the threshold for filing reports be tied to the definition of "Class A" carrier in 47 U.S.C. Part 32, because the reasons underlying the accounting classification in Part 32 do not provide a basis for treating benefit and depreciation reports differently from other reports required by Part 43. The filing of benefit and depreciation reports involves far less effort and planning than a change in accounting systems under Part 32.

The Commission certifies that the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, (1982) is not applicable to the rule changes which it adopted in this proceeding. In accordance with the provisions of Section 605 of that Act, a copy of this certification was sent to the Chief Counsel for Advocacy of the Small Business Administration at the time of publication of the Notice of Proposed Rulemaking in this proceeding in the **Federal Register.** As part of the Commission's analysis of the proposal described in this Order, however, the Commission has considered the impact of the proposal on small telephone companies, *i.e.*, those serving 50,000 or fewer access lines. Because of the nature of local exchange and access service, the Commission has concluded that small telephone companies are dominant in their fields of operation and therefore are not small entities as defined by the Regulatory Flexibility Act. *See MTS and WATS Market Structure*, 93 FCC 2d 241, 338–39 (1983). The Commission is therefore not required by the terms of that Act to apply the formal procedures set forth therein. However, the Commission is committed to reducing the regulatory burdens on small telephone companies whenever possible consistent with its other public interest responsibilities. Accordingly, it has chosen to utilize, on an informal basis, appropriate Regulatory Flexibility Act procedures to analyze the effect of the proposed regulations on small telephone companies. The Commission concluded that the proposed amendments to Part 43 will have a beneficial economic impact on many smaller local exchange companies and other carriers since the amendments will eliminate recordkeeping and reporting requirements applicable to such companies under the prior rules.

ORDERING CLAUSE: Accordingly, it is ordered, that pursuant to sections 4(i), 4(j), 201–205, 219(b), 220(b), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 201–205, 219(b), 220(b), and 403, Part 43 of the Commission's Rules and Regulations IS REVISED as set forth at the end of this document, effective January 9, 1989.

List of Subjects in 47 CFR Part 43

Communications common carriers, Reporting and recordkeeping requirements.

2616

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3160

[AA-630-87-4111-02; Circular No. 2616]

Onshore Oil and Gas Operations; Federal and Indian Oil and Gas Leases; Onshore Oil and Gas Order No. 3, Site Security

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking provides for the issuance of Onshore Oil and Gas Order No. 3, Site Security, which implements and supplements the provisions of 43 CFR 3162.7–5, Site Security on Federal and Indian (except Osage) oil and gas leases, previously cited as § 3162.7–4 and redesignated as § 3162.7–5 on January 15, 1988 (53 FR 1218) and corrected on June 30, 1988 (53 FR 24688). The Order addresses the seal requirements when sales are based on measurement by tank gauging, lease automatic custody transfer units, or combinations thereof. The Order also covers site security plans, facility diagrams, transporters' documentation, unauthorized removal or mishandling of production, and the recordkeeping and reporting requirements related thereto. In addition, the Order details enforcement actions and allows for variances from specific standards. This final rulemaking also amends 43 CFR 3164.1, Onshore Oil and Gas Orders, paragraph (b). This Order supersedes Notice to Lessees and Operators No. 7.

EFFECTIVE DATE: March 27, 1989.

ADDRESS: Inquiries or suggestions should be sent to: Director (500), Bureau of Land Management, Room 5647, Main Interior Building, 1800 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Sie Ling Chiang, (202) 653–2133 or John Duletsky, (202) 653–2286.

SUPPLEMENTARY INFORMATION: A proposed rulemaking for issuing Onshore Oil and Gas Order No. 3, Site Security, was published on August 13, 1987 (52 FR 30282) with a 60-day comment period. Comments were received from 18 sources: 3 industry associations, 9 industry entities, 1 Indian tribe, and 5 government entities. Three of the industry entities supported the comments submitted by 1 of the associations and also submitted their own comments.

Several changes and additions were made in the definition section for clarification in response to the comments. Changes were made in the requirements section both to correspond to the definition changes published May 16, 1988 (53 FR 17362), and in response to comments.

Those comments relating directly to the proposed rulemaking have been grouped by subject matter and will be discussed as a group rather than individually. Those comments not directly related to the proposed rulemaking will be referred to the appropriate Bureau office for review and any action deemed necessary.

Appendix

It has been determined that it is not necessary to include sections from 43 CFR Subparts 3163 and 3165 in the copies of Order No. 3 to be printed for distribution to the public. References to those sections in the table of contents and Part II of the Appendix have therefore been removed in the final rulemaking.

I.B. Purpose

One comment expressed concern that the Order did not amend §§ 3162.7–1 and 3162.7–5 but merely supplemented them. The intent of the Orders, of which this is the third, as stated in § 3164.1, Onshore Oil and Gas Orders, is to implement and supplement the regulations contained in 43 CFR Part 3160. Because technical requirements are more appropriately addressed in an Onshore Oil and Gas Order than in general regulations, many of the provisions of §§ 3162.7–1 and 3162.7–5 have been transferred to this Order. The Bureau intends to amend § 3162.7–5 after the effective date of this Order to remove any duplication between the Order and the regulations. Because of this upcoming change, all references to the definitions contained in § 3162.7–5 have been removed in the final rulemaking. However, references to definitions contained elsewhere in 43 CFR Part 3160 have been retained for ease of reference.

The second sentence of the second paragraph of section I.B. has been amended to clarify the purpose of the Order in regard to extension of abatement times and review of contested enforcement actions.

I.C. Scope

Two comments were submitted. One comment suggested modification of this section to reflect the language contained in 43 CFR 3161.1, Jurisdiction. The modification has been adopted, and the language has been changed to be consistent with the regulation. The other comment expressed concern as to jurisdiction over units that are not approved by the Federal Government and that contain Federal and Indian interests that are a small fraction of the unit. The language contained in this Order is consistent with the regulations. As was stated in the final rulemaking amending the regulations at 43 CFR Part 3160, 52 FR 5384 (February 20, 1987):

> The fact that Federal or Indian lands are committed to agreements for the purpose of drilling and development of those lands in the most beneficial manner is all that is needed to establish the responsibility of the Bureau of Land Management to ensure that the intent of the Federal Oil and Gas Royalty Management Act and other mineral leasing laws as to royalty accountability is carried out on those lands.

This policy was recently upheld by the District Court of Montana in *Norfolk Energy, Inc., Formerly Known as Tricentral United States, Inc. v. Hodel*, Civ. No. 87–188 (D. Mont., September 28, 1988), appeal filed (9th Cir., November 23, 1988).

II. Definitions

Access. This definition has been modified for clarification and consistency with the existing regulations in 43 CFR Part 3160 and the contents of this Order to include components in measurement systems, because components can also affect the determination of the quality and quantity of the liquid being measured. As proposed, the definition would have erroneously applied only to valves.

Authorized officer. A few comments suggested the need for a definition for "authorized officer." This term is defined at 43 CFR 3000.0–5(e), but has been included in this Order for convenient reference.

Authorized representative. One comment suggested amendment of this definition to require the authorized representative to provide certification to the lessee of proper authorization from the Secretary. All certified inspectors are required to carry identification cards with such certification. Because this is already provided for in the certification program, it is not necessary to include this requirement in the Order, and the suggestion is not adopted.

Business day. Two comments suggested that the term "working day" be clearly defined. The Bureau agrees that "working day" can be ambiguous, with weekends and holidays being working days in some circumstances. The term "working day" has been removed and replaced by "business day", which should eliminate misunderstanding.

Condensate. Several comments suggested that condensate be included

in the definition of "oil". There is an exclusion from the seal requirements (III. 1. e. iv.) when a gas well produces small amounts of condensate and only one tank is available for production, storage, and sales purposes. The exception applies only to gas well condensate, not oil, production. The suggestion is not adopted and a definition for condensate is being added to make it clear that oil is treated differently from gas well condensate.

Effectively sealed. The definition has been amended to cover components in LACT units, for the same reasons contained in the discussion of the definition of "access", above.

Facility. A few comments suggested that a definition for "facility" be added and the word "site" be removed from the Order and replaced with the word "facility." All suggested definitions contained the word "site". The suggestion to remove "site" from the Order is not adopted, because the terms are synonymous. However, one of the suggested definitions for "facility" has been included as part of the Order as compatible with the purpose and intent of the rulemaking.

Gas. Two comments questioned the use of the word "ordinary" in this definition as vague. The definition in the Order is consistent with the regulations in 43 CFR Part 3160, and it would be inappropriate to change it in the Order. For clarification, however, in general circumstances "ordinary" has historically been interpreted to mean "atmospheric," and for purposes of this Order this continues to be true.

Lease. One comment suggested that the phrase "on or from Federal or Indian lands" be added. The definition for this term is contained in 43 CFR 3160.0-5(f). The suggested changes are unnecessary because the definition already refers to enterprises controlled in some way by the United States under a mineral leasing law, and therefore can apply only to Federal and Indian lands.

Lessee. The definition of lessee has been amended for consistency with the final rulemaking published on May 16, 1988 (53 FR 17362).

Major violation. Two comments were made. One comment approved of the definition and the other suggested removal of the language relating to public health, safety and environment. The suggested change is not adopted. The definition in the regulations for major violation, which may be found at 43 CFR 3160.0-5(j), is used in this Order to conform to the regulations.

Minor violation. One comment suggested amending the definition to restate specifically the components of a major violation that a minor violation does not include. The comment is not adopted, because mere restatement of these components would be redundant, and the current definition of minor violation is sufficiently clear.

Moderate violation. One comment argued that the definition for "moderate violation" contained in earlier versions of the regulations should be retained. The term "moderate violation" was removed from the regulations governing these Orders when the regulations were amended on February 20, 1987 (52 FR 5384). The definition is not included in the final rulemaking in order to conform to the regulations.

Mishandling. Several comments requested clarification of the meaning of mishandling. A definition has been added to this Order.

Oil. Three comments suggested modifying the definition to include after the word substances "at atmospheric temperature and pressure." The definition is statutory and may be found at 43 CFR 3000.0-5. Condensate is excluded, but only for the purposes stated in III.1.e.iv. of this Order.

Bad oil, etc. Two comments suggested that the terms "bad oil," "clean oil/pipeline oil," "slop oil," and "waste oil" be considered subsets of the definition of oil and be organized as such in alphabetical order. The suggestion has been adopted as a practical and sensible approach and the change made.

Waste oil. A few comments suggested that tank bottoms should be added to the definition. It has been the policy of the Bureau that when an operator presents data substantiating that leasehold oil can neither be treated with existing or portable equipment nor disposed of to a reclaimer, it is considered waste oil, whether tank bottoms or oil residue in pits. The suggested changes are not adopted.

Operator. One comment suggested a modification of this definition by inserting the word "responsible" between "the" and "party" in the first sentence. The definition for operator as published on May 16, 1988 (53 FR 17362), has been included in this Order.

Seal. One comment suggested amending the definition to include the phrase "designated not to be reused". This suggestion has not been adopted because seals are manufactured so that once used they actually cannot be used again. However, the definition has been modified to complement the definition in this Order of "effectively sealed" and the requirements for sealing LACT components affecting quality and/or quantity.

III. Requirements

A.1.a. One comment suggested rewriting the paragraph because in the opinion of the writer seals do not provide a means for documenting the removal of production. If seals are properly used, and the use thereof properly and accurately documented, it will provide a means of documenting the removal of production from a facility. The suggestion is therefore not adopted.

A.1.b. Several comments were made relating to the specific valves that required sealing, and the necessity for the sealing device to be at the site. Other comments asserted that each ineffectively sealed valve, or appropriate valve not sealed, should not be a separate violation. The paragraph has been modified as to the valves requiring sealing and the location of the sealing devices. However, each ineffective seal or missing seal continues to constitute a separate violation, as this is considered necessary to ensure adequate compliance with the requirement, but valve seal violations other than violations affecting the sales valve have been changed to minor violations in the final Order. Oil is not readily accessible from the other valves as it is from the sales valve, and failure to seal these other valves effectively is not likely to lead to nonrecoupable loss of the resource.

A.1.e.i. Four comments requested clarification of this exclusion as it pertains to production vessels. The provision has been reworded to specify that valves on production vessels are excluded, as well as valves on tanks used as production vessels. The wording has also been amended to make it clear that the listed vessels are intended to be examples of vessel types rather than the only acceptable vessels.

A.1.e.ii. This exclusion from the seal requirements has been modified to identify those piping systems through which access to production could occur.

A.1.e.iv. Four comments suggested removal of the term "condensate" and the substitution of the word "oil." As stated previously in II. Definitions, the exclusion from the requirement that fill lines be effectively sealed applies only to condensate production, and was not intended for oil production. The suggestion is not adopted.

A.1.e.viii. Four comments requested that vent lines be included in the exclusions for clarity. The request has been adopted and vent lines have been added. In practice, vent lines have always been excluded from the general requirement that valves be sealed.

A.1.g. This paragraph has been modified to reflect the change in A.1.b., as was suggested in comments.

A.2.a. Several comments suggested various changes in this paragraph relating to proper position of a valve, the severity of violation for each ineffectively sealed or unsealed valve, the abatement period, and sealing requirements during various production activities. Consistent with the changes made in paragraphs A.1.b. and A.1.g., the violation has been changed from major to minor for all valves except the sales valve. The abatement periods have also been modified.

A.2.b. A few comments suggested modification of this paragraph relating to the location of the devices used for sealing purposes to allow them to be stored at a centralized field location rather than at each site, and questions were raised regarding the severity of the violation. Paragraph A.1.b. was amended to allow sealing devices to be stored with the operator's representative or in a centralized field administrative location. This change has been included in this paragraph as well as in paragraph A.1.b. Whether sealable valves and seals or devices and seals are used is not material. The degree of the violation and the abatement period would be the same. The changes have been made.

B.1. Several comments suggested that each ineffective or missing seal not be a separate violation. As previously stated in the response to comments on paragraph A.1.b., the Bureau considers each seal violation as a separate violation. A comment suggested that the abatement period for sealing components be extended. Given the potential loss of mineral revenue, a 24-hour abatement period is considered to be adequate. The term "working day" has been changed to 24 hours for clarity, because "business day" excludes weekends and Federal holidays. Another comment stated that the purchaser should be responsible for maintaining seals on LACT units. The operator is considered the party responsible for compliance with the lease terms, regulations, and Orders. Therefore, no change is being made as to responsibility.

C.1.a. Several comments suggested various changes to this paragraph as it relates to the identification requirements involving the lease, communitization, or unit agreement number, the location of the facility, and posting the time of the transaction. The time requirement has been removed because time of removal is immaterial to production accountability. Other requirements were retained because the required identification should be readily available from the sign required pursuant to 43 CFR 3162.6, Well and facility identification. Without the proper identification on a run ticket there would always be a question as to the point of origin of the oil being transported. The suggestion that the violation be downgraded to minor is not adopted. The source of the oil is information vital to production and royalty accountability. The abatement period has been increased to 3 business days and the requirement for the time has been removed. This allows the operator greater flexibility and will not adversely affect production accountability.

C.1.b. Several comments suggested changes. One suggested removing the entire paragraph, two questioned the need for the recording time, and one questioned the need for the signature of the operator's representative. The time requirement has been removed as unnecessary. The term "working day" was removed and "business day" was used for all the abatement periods. The signature of the operator's representative is required since it is considered to signify acceptance of the documentation of the sale or removal of oil from the facility.

C.1.c. Several comments were received relating to a completed run ticket, possession of such a run ticket by the driver of the truck which completes the sale or removal of production from the facility, the sealing of all other valves except the sales line valve, deletion of the operator-purchaser responsibility, and the unloading of the truck when proper documentation is not available. Changes in this paragraph have been made to specify that the information required in run tickets is that specified in G.1. a. and b. Changes have also been made to make it clear that all valves on lines entering or leaving sales tanks be required to be sealed between truckloads except the sales and vent line valves in light of the provision that only the final truck of a group of trucks needs to carry the sales documentation. The requirement to unload the trucks has been removed because all trucks do not have pumping equipment. Provision has been added to specify that the operator may apply for a variance from run ticket requirements if individual circumstances require.

E.1.a. Numerous comments were received relating to failure to report the incident of theft or mishandling, the volume of oil or condensate involved, the abatement period, and the requirement that the incident report state whether a theft was reported to company security. The proposed rulemaking provided no standards by which to determine when a failure to report a theft would be considered knowing or willful conduct. Therefore, this portion of the paragraph relating to failure to report has been removed from the final rulemaking, leaving the Bureau to determine on a case-by-case basis whether such failures are knowing or willful conduct within the meaning of the regulations in 43 CFR Subpart 3163. A provision has been substituted that provides for oral reporting with a written followup. The word "estimated" has been inserted before volume in the fourth item as a practical amendment. The abatement periods have all been changed to 10 business days. However, the requirement that the incident report identify to whom the theft or mishandling has been reported has been retained. Depending on the nature of a particular theft, the Bureau may wish to confer with company security or local law enforcement personnel investigating the incident. The suggestion that thefts be reported directly to Indian tribes was not adopted. The reporting of thefts to tribes can be accomplished through internal governmental agreements.

F.1.a. Several comments made suggestions concerning this paragraph. Most of them questioned the need for self-inspection for the minimum site security requirements, opposed the monitoring of any such program by the Bureau, and stated that self-inspection should be at the option of the operator. The Federal Oil and Gas Royalty Management Act required the Secretary to establish minimum standards for site security plans which would be developed by operators. Self-inspection was determined to be a way in which operators would be able to protect oil and gas produced or stored on a lease site. The suggestious are not adopted and self-inspection with Bureau of Land Management monitoring remains as part of the Order.

G.1. Numerous comments recommended removing the requirement for showing the time the activity took place; expressed confusion as to the severity of the violation in the event of noncompliance, and confusion as to the meaning of the corrective action to be taken and the abatement period. Or suggested removal of the entire paragraph. The requirement for showing the time has been removed as unnecessary, because the time of removal is immaterial to production accountability. The Order has been amended to provide for only one level of violation, major, because of the effect of noncompliance on production accountability. Recordkeeping for self-

inspection activities under this paragraph has been removed as unnecessary: As a practical matter, there can be no self-inspection without recordkeeping. The wording for corrective action has been changed to "commence and maintain documentation", because the proposed requirement that records be produced would be impossible to comply with if there is no system of recordkeeping. Since the corrective action language has been changed, the abatement time is considered to be reasonable. "Working day" has been replaced by "business day." The suggestion that this section be removed has not been adopted because its provisions are required by the Federal Oil and Gas Royalty Management Act and by regulations.

H.1. Several comments were received on this section. One comment suggested removal of this provision. Others suggested removing the word "lessee" from the text because the lessee is not the responsible party unless he is also the operator, and excluding dry gas production facilities from this requirement because they do not include storage facilities. "Lessee" has been removed from the text. Although a site facility diagram is not required for dry gas production facilities, there still is a need to monitor to assure that the measuring equipment meets the minimum requirements and that no by-passes around the meter exist or are installed. The suggestion that dry gas production facilities be excluded from the site security plan requirements is not adopted.

I.1. Numerous comments were submitted on this provision. These comments suggested removal of the word "condensate", change of the word "actual" to "relative", removal of the word "lessee", and clarification of what completion of a facility means. Some comments also expressed concern about changes or modifications of the storage and sales facilities. It was also suggested that dry gas production facilities be excluded from this requirement. Two comments recommended that a provision be added that existing site security diagrams already submitted are considered approved and acceptable, but that when new facilities are added or old ones modified after the effective date of this Order, they shall comply with the requirements of this section as to diagrams. Language has been added to exclude dry gas production facilities, because such facilities have no storage elements, and the word "actual" has been replaced with "relative" because the diagrams are not required to be drawn to scale, the words "of construction" have been added immediately after "completion", and "working" has been replaced by "business" in the abatement period, all for clarity or for purposes of practicality. The term "condensate" has not been removed as suggested for the reasons previously discussed in the preamble. Site security diagrams cannot be approved until they are inspected, but new diagrams will be required only if the existing ones are found inadequate. The comment recommending automatic acceptance and approval of diagrams previously submitted is rejected.

IV. Federal Seals

A new section has been added to include information about the current practice of the Bureau of Land Management calling for the placement of Federal seals on any appropriate valve, sealing device, or LACT component not in compliance with the minimum standards for sealing requirements. This section advises that Federal seals are placed on appropriate valves only when (1) the operator is not present at the site to correct the noncompliance upon its discovery by the authorized officer, or (2) the operator refuses or is unable to make the necessary correction. Immediately upon attachment of the Federal seal, the authorized officer notifies the operator or lessee by telephone and letter that it is in place and of the corrective measures that need to be taken before it may be removed and replaced. Placement of the Federal seal does not constitute abatement of the violation for failure to have a seal in place. Finally, the section notes that a card is attached to the Federal seal, which advises that tampering with a Federal seal shall result in an assessment of $250. No monetary penalty is associated with the Federal seal itself other than this penalty for tampering with it.

V. Variances from Minimum Standards

One comment suggested that a provision be included to provide for oral approval of variances with written confirmation to be provided not later than the fifth business day following oral approval, as is provided for in Onshore Order No. 2 drilling operations. There are good reasons to allow such oral approvals for variance in drilling operations, because certain conditions may create a situation demanding immediate change or variance to the approved drilling plan, but those reasons are not applicable to the site security requirements. The suggestion is not adopted.

Attachments

Two comments suggested that the attachments relating to site security diagrams and sealing of valves be clearly identified as being examples. Attachment I has been identified as being provided solely as an example, and, as stated earlier, Attachment II has been removed.

Editorial and grammatical corrections and changes have been made as necessary.

The principal authors of this proposed rulemaking are John Duletsky of the Washington Office, Raymond Thompson of the New Mexico State Office, Ray Brubaker of the Montana State Office, Ron Fellows of the Farmington Resource Area, New Mexico, David Little of the Vernal District Office, Utah, Gary Bauer of the Rock Springs District Office, Wyoming, and Allen Schweighart of the Worland District Office, Wyoming, assisted by the Orders Task Group, the staff of the Division of Legislation and Regulatory Management, all of the Bureau of Land Management, and the Office of the Solicitor, Department of the Interior.

It is hereby determined that this proposed rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

The information collection requirement(s) contained in this rulemaking have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1004–0134.

List of Subjects in 43 CFR Part 3160

Government contracts, Mineral royalties, Oil and gas exploration, Public lands—mineral resources, Indian lands—mineral resources, Reporting and recordkeeping requirements.

Under the authorities stated below, Part 3160, Group 3100, Subchapter C, Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below:

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3160

[Circular No. 2617; AA-610-88-4111-02]

Onshore Oil and Gas Operations, Federal and Indian Oil and Gas Leases; Onshore Oil and Gas Order No. 4, Measurement of Oil

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking issues Onshore Oil and Gas Order No. 4 under 43 CFR 3164.1. This Order implements and supplements requirements found in 43 CFR Part 3160 relating to the measurement of oil produced under the terms of Federal and Indian (except Osage) oil and gas leases, as well as oil produced from State or privately owned lands when Federal and/or Indian leases receive a share of such production under the terms of an approved agreement. The Order addresses oil measurement by tank gauging, by positive displacement metering systems, and by other methods acceptable to the authorized officer of the Bureau of Land Management. The Bureau of Land Management's existing internal guidelines on oil measurement were never published as a Notice to Lessees and Operators. Thus, this Order has no direct predecessor.

EFFECTIVE DATE: August 23, 1989. Suggestions or inquiries may be submitted to: Director (610), Bureau of Land Management, Room 601, Premier Building, 1800 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Richard T. Hunter (303) 236-1750 or Sie Ling Chiang (202) 653-2127.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management (BLM) published the rulemaking proposing Onshore Oil and Gas Order No. 4 in the Federal Register on February 3, 1988 (53 FR 3158), asking for comments on the proposed rulemaking by April 4, 1988. At the request of several respondents, BLM published a Federal Register Notice on April 6, 1988 (53 FR 11318), which extended the comment period through April 19, 1988.

During the comment period, 31 written comments were received: 23 from business entities, 3 from associations, 1 from a State agency, and 4 from offices of Federal agencies. The Bureau appreciates the time and effort spent by the respondents in reviewing the proposed rulemaking and the highly detailed responses offering constructive suggestions for improvement. Many of the comments, both technical and editorial, were adopted and are reflected in the final rulemaking.

Discussion of General Comments

A number of comments supported formalizing measurement requirements and stated that promulgating rules will facilitate a better understanding of the requirements. Several comments objected to the entire concept of the proposed rulemaking, arguing that it is unnecessary. One comment stated that the proposed rule in its present form was not authorized by the statutes. The necessary authority exists at 30 U.S.C. 1711 and 30 U.S.C. 189. The final rulemaking will be of overall benefit to both the oil and gas companies and the various Government agencies, by providing the minimum standards critical to accurate measurement and reporting of production nationwide.

Custody Transfer/Allocation Meters

Numerous comments argued that the Order should only apply to custody transfer measurements and not allocation measurements. They stated that the proposed rules are for application to single phase, homogeneous oil, gas, or condensate flows that have been cleaned up and stabilized for commercial pipeline transport. They argued further that allocation meters may involve the flow of vapor and liquids, two-phase flow, and therefore that the allocation meter should not be held to the same tolerances as the custody transfer or sales meter. A custody transfer or sales meter is one from whose measurements royalty is determined directly. An allocation meter is a meter whereby production is measured and credited to a lease(s) or well(s). BLM has the responsibility to designate or accept measurement points (meters) from whose measurements royalties will be determined. All such designated measurement points are required to meet the minimum standards of this Order. The designated or accepted measurement point may be a custody transfer meter, a sales meter or an allocation meter. In any case, the meters are required to be measuring single phase flow. BLM requires that all production removed or sold from the lease be placed into marketable condition using appropriately sized and maintained production equipment, and the oil, water, and gas separated prior to measurement, or that a variance be approved. To clarify that the proposed standards apply to allocation as well as sales meters, the phrase "and allocation" has been added to paragraph 2 of section III.B.

Responsibility for Proper Measurement

Numerous comments were received expressing concern because the proposed Order provided that the lessee/operator is responsible for the handling and proper measurement of lease production, when in some cases the sales meters are owned and operated by the purchaser/transporter. In such cases, the operator may not have control over the measurement equipment. Most comments urged that the responsibility for proper sales measurement should be placed on the owner of the sales meter and that only the responsibility for allocation measurement should be placed on the lessee/operator. BLM recognizes that the purchaser often owns and maintains the custody transfer or sales meter. However, requirements for proper measurement are normally included in the purchase contract. Existing regulations at 43 CFR 3162.1 hold the lessee/operator responsible for assuring that all oil and gas production operations on Federal or Indian leases, including proper measurement, comply with Department of the Interior regulations, whether conducted by the lessee or by parties having contractual agreements with the lessee. This Order does not change the responsibility of the lessee. First, the standards in this Order are generally API standards. Second, normal sales contracts require the purchaser to maintain the sales meter properly, and third, historically, holding the lessee/operator responsible for proper measurement has not created significant problems for the operators or purchasers. The operator is often unable physically to correct violations resulting from meter problems, and this has been taken into account in setting abatement periods. In addition, 43 CFR 3163.2(f)(1) provides civil penalties up to $25,000 for any person who knowingly or willfully prepares, maintains, or submits false, inaccurate or misleading reports. This regulation applies to the purchaser as well as the lessee/operator.

Phase-in Period

Specific comments were requested as to a phase-in period of time after which this Order will become effective. Ten comments were received recommending either no phase-in period or one ranging up to two years. The rationale for a phase-in period offered in the comments included time to install and upgrade equipment, resolve contractual issues, to train field and accounting personnel, and obtain variance approvals. The BLM agrees that a phase-in time period is appropriate for the installation of new

equipment or the modification of existing equipment, and the training of field personnel. The phase-in period will also allow those companies desiring to do so to obtain justifiable variances and be in full compliance on the effective date of this Order. Accordingly, all sales and allocation facilities are required to be in full compliance with the requirements of this Order within 6 months. Where the operator is in possession of a valid variance issued by the authorized officer, the variance will take precedence over the Order, and will be effective on the date of its approval. The phase-in period shall begin on the day this Order is published in the Federal Register.

During the phase-in period, until the effective date of this Order, the BLM will continue to inspect and enforce all standards that have been used in the past. The phase-in period is intended to allow time for the lessee/operator to bring all existing equipment and operations, including specified procedures and reporting practices, into full compliance by the effective date of this Order, and does not in any way relieve the lessee/operator from complying with the Orders of the authorized officer or being subject to the existing laws, regulations, and practices by which the BLM has carried out the inspection and enforcement policies in the past. The authorized officer may grant time extensions, on a case-by-case basis, where the operator can justify the need for additional time or where the shut-in of production would become necessary.

Abatement Periods

Specific comments were requested regarding the abatement period stated in the proposed rulemaking as "prior to sales or removal", asking whether it would be preferable to set a specific time period or firm deadline. One comment recommended that specific deadlines should not be set. Another comment stated that many of the abatement periods are entirely too short to provide adequate time to correct violations, and made specific recommendations for several standards recommending increases of 5 to 30 days for abatement. Specific deadlines were not added where the abatement period is "prior to sales or removal," and clarification of the phrase is added to section III.B.3. A number of abatement periods were lengthened as recommended in the comments for specific violations where increases could be justified. Whenever the abatement period is stated as prior to sales or removal, the potential for permanent loss of royalty exists and no oil or gas may pass the meter that has been designated as the measurement point.

Purpose

One comment supported BLM's stated intent to provide regulations pertaining to the rights of the operator to administrative and/or judicial review and appeal. The regulations pertaining to the rights to administrative review and hearing on the record, as well as the right to appeal, are contained in 43 CFR Subpart 3165, and language of assurance from that regulation, and a provision allowing extensions of abatement periods for any violations under certain conditions, have been added to the Order in this section. Another change to the Order included the addition of one phrase of clarification in the first paragraph following the words "measurement of oil", which reads "and to provide standard operating practices for lease oil storage and handling facilities."

Scope

One comment suggested that the description of the applicable lands subject to this Order, in addition to all Federal and Indian (except Osage) oil and gas leases, be changed to the wording contained in 43 CFR 3161.1—Jurisdiction. The suggestion was adopted and the wording in section I–C, Scope, was changed to correspond with § 3161.1. Another comment stated that the scope is too broad, and that it was arbitrary for the Order to be applicable to State or privately-owned lands, when Federal and/or Indian leases are entitled to share the revenues, no matter how small, from non-jurisdictional wells. The wording in 43 CFR 3161.1 as authorized by the Federal Oil and Gas Royalty Management Act of 1982 will be maintained.

Definitions

Several comments offered specific language for amending the definitions or suggested the addition of several more.

The term "authorized representative" was removed to clarify the intent and "authorized officer" was added as recommended in several comments.

A definition for "business day" was added and the term "working day" was changed to "business day" throughout the Order.

Several comments addressed the definition of "by-pass", offering varying language. All references to "by-pass" were removed from this Order. This term is adequately covered in Onshore Oil and Gas Order No. 3.

One comment observed that most of the major violations listed will not result in a substantial adverse impact on royalty income. All of the violations identified as "major" in the proposed Order were re-examined to determine their effect on royalty income, and several were changed to minor violations. Violations designated as major involve improperly designed and/or installed equipment incapable of correct measurement, or other circumstances that directly and adversely affect Federal or Indian royalty calculations.

One comment suggested the term "minor violation" needs clarification because it could be construed to ripen ultimately into a major violation. This Order contains the definitions of major and minor violations used in the regulations. They are viewed as separate offenses with separate penalties. However, a minor violation remaining uncorrected for as little as a few hours could indeed attain the status of a major violation and the INC be reissued as major. The civil penalties for failure to comply with written orders to correct major and minor violation are contained in 43 CFR 3163.2(g)(2).

One comment suggested the addition of definitions for "operator" and "operating rights owner". These definitions were added in order to explain the distinction between the terms. A few comments suggested revisions of the definition of "oil", and one comment recommended that "bad oil", "clean oil", "slop oil", and "waste oil" be made subheadings of the definition of "oil" and arranged alphabetically. The suggestion was adopted with the exception of the term "bad oil" which was removed. The definition of "oil" is considered adequate and is unchanged. The suggestion to add "allocation measurement", "facility", "purchasers", and "transporters" was not adopted.

Requirements

One comment suggested that the provision on recordkeeping in Order No. 5 be added to this Order. To maintain consistency with the gas measurement order, Onshore Order No. 5, in which the recordkeeping provision was removed from the minimum standards, and because recording and reporting are a procedural requirement of the Federal Oil and Gas Royalty Management Act rather than being an enforceable minimum standard, the requirement for recordkeeping was inserted as a notification under section III.A. To accommodate this insertion, section III.A. General was changed to III.B. General. Also, the words "and

allocation" were inserted in III.B.2. to clarify the intent of the Order.

Numerous comments asked questions as to the intent of the Order in general terms and as to how the Government would respond in certain situations, such as whether equipment failure would result in a violation citation for an operator. In response to such questions, section III.B. of the Order was greatly expanded to provide this information.

One comment suggested that, to maintain consistency with the gas measurement order, a paragraph clarifying the failure to comply with the minimum standards should be added to III.B.2. This suggestion was adopted. In addition, a statement was also added to section III.B.2. saying that meters installed in accordance with standards in effect at the time of construction need not automatically be retrofitted to meet revised API standards. The term "or latest revised standard" has been removed from the standards. New API standards will be reviewed before being adopted in rulemakings amending this Order. It would be improper to impose automatic tightening of standards without allowing the public an opportunity to comment during the rulemaking process. On the other hand, if API standards were relaxed, the Government should review them carefully to make sure the public interest in accurate measurement is not harmed before amending the Order.

Oil Measurement by Tank Gauging

A suggestion in several comments to revise many of the references from "ASTM" to "ANSI/ASTM" and insert "Reaffirmed 1987" was adopted throughout the Order.

One comment suggested a clarification that temperature measurements are required to be made in the tank and not from the samples. The proposed sentence was added to paragraph l, sentence 4. Another suggestion was made to add a reference to ANSI/ASTM D–1250 Tables 5A and 6A. The suggestion was adopted in the final rulemaking.

One comment suggested amendments to allow line sampling of the tank contents during delivery, measurement of API gravity and sediment and water content at laboratories offlease, and volume and gravity corrections after liquid level measurements have been completed. Line sampling and volume and gravity corrections may be appropriate in special cases but are generally not applicable to measurements onsite on the lease. Nothing in the Order precludes the determination of API gravity and sediment and water contents at laboratories off the lease so long as the determinations are made prior to sale or removal of the oil from the lease. One comment suggested that sampling of the oil be accomplished after gauging. This suggestion was not adopted because gauging prior to sampling could cause a contaminated sample, resulting in incorrect measurements of oil quality.

Standard No. 1—Sales Tank Equipment

Two comments were made recommending the removal of API RP–12 Rl from the Order because it is an API recommended practice. The recommended practice of the API in this case is the primary reference industry-wide for setting, connecting, maintaining, and operating lease tanks, and therefore it has been adopted as the only available and reasonable minimum standard. One comment stated that RP–12 Rl does not apply to large welded tanks used in some custody transfers. RP–12 Rl relates directly to lease production and is acceptable as a minimum standard.

Several comments suggested that, given the complexity of many API standards, the proposed Order is too detailed. They suggested that a simple reference to the API standards would be more appropriate rather than the inclusion of many specific and detailed standards. The complexity of the published standards is recognized, but inclusion of the standards in detail is appropriate because each carries a specific violation, corrective action, and abatement period. However, there were many revisions made to clarify the wording and a significant amount of consolidation of standards. The consolidation of separate standards into a single standard in some cases clarifies the intent and makes the Order easier to read.

A few comments recommended that the abatement period for installation of a proper pressure vacuum thief hatch and/or ventline valve be extended from 5 days to 30 days to allow a more reasonable time period to do the work. This recommendation was adopted. One comment stated that the standard has no direct bearing on the quality of measurement and should be removed or downgraded to a minor violation. This recommendation was not adopted. The absence of this equipment could adversely affect the quality of some grades of oil and could, therefore, adversely affect the royalty payments due the Federal Government. Where the quality of the oil could not be affected, as, for example, when the lighter constituents of the oil, which have lower vapor pressures, are absent, a variance could be requested.

As suggested by a comment, the standard (III.C.1.b.) regarding tank connections and sealable valves was removed from this Order. This subject is adequately covered in Onshore Order No. 3.

A number of comments addressed the requirement for a gauging reference point. Most stated that a reference point is not necessary unless "outage gauging" is being used. BLM agrees with the statements regarding outage gauging, but does not agree that the reference point is not necessary at all. The upper lip (seal point) of the thief hatch may be designated as the reference point. The operator/lessee is responsible for setting the reference point, and the owner of the tank, if not the operator/lessee, should agree on the reference point. BLM will not be involved except to inspect for accuracy. The designation of such a reference point is required to be stenciled on the tank near the hatch.

Standard No. 2—Sales Tank Calibrations

A number of comments addressed the requirement for tank calibrations, most of them suggesting reduction of the violation from major to minor and extension of the abatement period to 60 days for the calibration of sales tanks. With regard to the first recommendation, the reduction of the gravity of the violation to minor is reasonable because losses may be recouped through recalculation of the measurement after recalibration of the tank. As for the second recommendation, recalibration may require as much as 60 days. These recommendations have been adopted. One comment recommended a clarification for sales tank recalibration by replacing the word "removed" with the words "relocated or repaired". This recommendation was adopted because it more fully covers the circumstances that require recalibration. One additional reference, API RP 2556, was also inserted, based on comments.

Several comments objected to the automatic submission of all tank calibration tables to the authorized officer and recommended that they be submitted only on request of the authorized officer. This recommendation was adopted as a way of reducing unnecessary paperwork.

Standard No. 3—Oil Sampling

A number of comments were received on oil sampling. One comment recommended minor changes to the API reference title and the addition of

of densitometers and pycnometers for the measurement of gravity. BLM believes the standards in the Order are sufficient as minimums.

Composite Sample Container

The standard and corrective action were changed in response to comments to specify emptying the container after each sample withdrawal. One comment recommended additional requirements for the sample container, such as a back pressure regulator and a vacuum breaker. These design features are desirable, but not necessary for a minimum standard.

Mixing System—Strainer

A few comments were received suggesting minor rewording of this standard. The word "noncorrosive" was changed to "corrosion resistant" as recommended because it is recognized that no material is truly non-corrosive. The suggestion to change the word "testing" to "measurement" regarding the properties of the sample was not adopted. "Testing" seems more appropriate for this standard.

Positive Displacement Meter

Two comments recommended changing the corrective action for a meter without a nonresettable totalizer. An appropriate change was made to allow replacement of either the meter or the totalizer. One comment reiterated that it is in the interest of the operator that the meter perform correctly and, therefore, the violation should be changed to minor. The supposition that self-interest of the operator assures proper performance of the meter may not always be the case. Many times the operator has only limited control of the measurement device. Unrecorded oil sales or transfers have the potential for nonrecoupable losses of royalties, and the recommendation was not adopted.

Meter Proving Connections

Several comments were submitted. One comment recommended that a clarification be made to the prover connection allowing for multiple valves. Other comments requested clarification of the positioning of the back pressure valve and check valve. By combining and rewording the standards, the needed clarification was made and the standard is now adequate and sufficient.

Standard No. D.3—Sales Meter Proving Requirements

One comment argued that the corrective action for proving a meter with an unacceptable prover does not require a shut-in of the LACT because volume adjustments can be made to the previously measured volumes. The provision has been amended as suggested. The violation was changed to minor and the abatement period to 30 days, because no nonrecoupable loss of royalty would be caused by a violation.

Three comments requested clarification on the notification of the authorized officer when positive displacement meters are proved. The submission of the schedule of meter provings is required to permit the authorized officer to be present for the proving.

Several comments were submitted stating that only the prover should be responsible for the on-site possession of evidence that the meter prover has been calibrated, and that if a master meter prover is utilized, evidence be available on the site that said meter has been calibrated to the stated tolerances. The standard was amended to place the responsibility for the required documentaton on the prover, who has custody of the equipment. However, the abatement period remains "prior to proving".

It is assumed that any irregularities in calibration or proving of the LACT meter will be corrected during the calibration or proving of the meter as prescribed in the Order. Irregularities (failure properly to calibrate or prove the LACT meter) discovered after the proving shall be treated as a violation. An incidence of noncompliance will be issued stating the appropriate corrective action and abatement period. Accordingly, the abatement periods in this section of the Order are prior to completion of the calibration or proving.

Two comments were made objecting to the required frequency to prove meters upon initial installation or following repair and at least monthly thereafter for the first three months. It is agreed that this requirement may be excessive. The standard has been modified appropriately and the abatement period changed to 10 business days.

A few comments recommended changes to the requirement for bi-weekly LACT meter provings whenever the throughput exceeds 100,000 bbl per month and recommended that the provings be made monthly. Following a review of the standard and its historical application in the field, it is agreed that the frequency should be monthly and the abatement period has been changed to 10th business day.

Establishing the Operating Meter Factor

Several comments objected to the tolerance 0.0005 in establishing a meter factor and the level of major for violation of the standard. After due consideration, the standard is considered to be correct and the violation is appropriately classified as major. The rationale for this decision is that improperly established meter factors can result in losses of royalty which cannot be recouped by recalculation. The addition of "(0.05%)" was made for clarity, rather than a substitution as suggested in one comment. The corrective action was changed accordingly and the abatement period was changed to 10 business days.

One comment addressed correction for the effect of pressure and temperature on steel (Cps) and (Cts). The comment observed that these corrections apply only to provers. In response to this comment the standard was changed. One comment stated that a properly determined meter factor could be accurate, but could have a value well outside the brackets of 0.9950 to 1.0050. It is agreed that there is such a possibility, but the factor will be required to be within the specified bracket unless the deviation can be justified to the satisfaction of the authorized officer. The violation was changed from major to minor, because inaccurate measurements of this type can be recalculated following recalibration, and a corrected report submitted. The corrective action was clarified and abatement period modified.

Standard No. D.4—Excessive Meter Factor Deviation

Two comments offered suggestions for the calculation of volumetric corrections when excessive meter factor deviation is discovered. One comment observed that current industry practice provides for correction of the error for one-half of the period between current and previous tests. A second comment recommended the Order be made consistent with Minerals Management Service (MMS), 30 CFR Parts 250 and 256, which state the procedures for dealing with meter malfunctions. Following a review of MMS regulations, it was decided to adopt this recommendation. This change in the Order does not in any way relieve the operator/lessee of the responsibility of notifying the authorized officer of meter malfunction or meter failure.

Several comments discussed the standard requiring that a meter factor shall not exceed 1 percent above or below unity. One comment suggested increasing the allowable deviation to 2 percent while another comment recommended the removal of the standard in its entirety. The added explanation under Excessive Meter Factor Deviation (III–D–4) is adequate to

answer these comments and offers a definite method for recalculation of volumes when excessive meter factor deviation or meter factor malfunction occurs. The violation has been changed from major to minor because recalibration will enable the meter factor to be recalculated.

Standard No. D.5—Meter Reporting Requirements

Two comments addressed the forms set out in API Chapter 12 for filing meter proving reports. One comment observed that these forms are only examples and are not intended to be used as a standard form. Another comment recommended an addition to the standard to allow the use of the forms in API Chapter 12 or any similar formats provided all the data are included. It is agreed that the intent of the standard is properly served so long as the report is filed in a timely manner and includes all the data as prescribed on the forms specified by API. Several comments recommended the extension of time for abatement ranging from 15 to 30 days. This recommendation was not deemed appropriate and was not adopted. Proving reports should be available to the operator at the time of proving and the 10 business days is considered reasonable.

E. Oil Measurement by Other Methods or at Other Locations Acceptable to the Authorized Officer

Standard No. E.1—Measurement on Lease, Unit or Communitized Area

One comment objected to the violation being classified as major and another recommended approval of turbine meters for use, and any other method approved by API, without first obtaining approval from the authorized officer. In answer to the first comment, the violation is considered major because there is the potential for immediate and adverse impact on royalty collection and nonrecoupable loss due to possible improper or inaccurate measurement. In answer to the latter comment, 43 CFR 3162.7–2, Measurement of Oil, specifically restricts the measurement of oil, without prior approval, to tank gauging and positive displacement metering systems.

Standard No. E.2—Measurement at a Location Off the Lease, Unit, Unit Participating Area, or Communitized Area

Several comments addressed off-lease measurement. One comment agreed that prior approval is in order, but emphasized that such approval should not be unreasonably delayed, and stated that the violation should not be classified as major. An application for off-lease measurement is not automatically approved. The necessary data is required to be submitted for study and a justification for such an action is required to be made to the authorized officer. If the application is complete and proper justification is provided, the BLM will make a timely decision. The violation is major because there is potential for improper measurement or allocation and adverse impacts on royalty payments that may not be recoupable. Another comment objected to the necessity for obtaining prior approval for existing off-lease measurement. The phase-in period of 6 months is considered sufficient time to obtain needed approvals; however, existing off-lease measurement should have been approved by the authorized officer even without the advent of this Order. For consistency, the abatement period was changed to 20 days.

F. Determination of Oil Volumes by Methods Other Than Measurement

One comment observed that the cost of recording and reporting would exceed the income from the oil. Recording and reporting are required by the Federal Oil and Gas Royalty Management Act. Several other comments agreed with the need for the standards. One comment suggested clarifying the intent by inserting the words "or disposed of" following the words "may be classified". This suggestion was adopted because it recognizes a possible alternative disposition of waste oil.

Concerning slop oil, in response to comments, the standard was rewritten to require only that the authorized officer be notified of the volume sold or disposed of and the method of computation of the volume for proper product accountability.

IV. Variances from Minimum Standards

Two comments recommended that both oral requests and approvals be allowed so long as the oral request was followed by a written request not later than the fifth business day following oral approval. This recommendation is acceptable and is adopted. In addition, the standard was expanded to include language allowing authorized officers to issue Notice to Lessees (NTLs) on their own motion and establish modified standards or variances for specific areas of operation. A provision for the authorized officer to protect royalty income and provide for proper product verification by requiring additional standards was also included to provide administrative flexibility. While situations requiring additional standards should be infrequent, it must be remembered that the Order consists of minimum standards, not necessarily optimum standards applicable to every situation on a nationwide basis. When additional standards are required, the operator/lessee will be notified in writing, the additional requirements will be reasonable, and the rationale for imposing the standards will be fully explained.

The principal authors of this final rulemaking are Richard T. Hunter, Lakewood, Colorado; Joe Delozier, Bakersfield, California; Terry Messerli, Billings, Montana; Upendra Parikh, Jackson, Mississippi; and Joe Chesser, Santa Fe, New Mexico, of the Bureau of Land Management Orders Committee responsible for the development and issuance of this Order, assisted by the Orders Task Group, the staff of the Division of Legislation and Regulatory Management, Bureau of Land Management, the Office of the Solicitor, Department of the Interior, and Raymond W. Vinyard, retired from the Bureau of Land Management. Ronald Heath, Minerals Management Service, was also a part of the Orders Committee and assisted on royalty accounting issues.

It is hereby determined that this final rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The final Order will have no adverse economic effects, because its requirements reflect the operating practices currently followed by prudent operators when oil production is measured in accordance with the standards and practices recommended by the American Petroleum Institute. The final Order may provide a beneficial economic effect. Industry is less likely to be subjected to assessments or penalties resulting from violations and/or the requirement to undertake costly remedial actions, if it has a better understanding of the requirements of the Bureau of Land Management that relate to the measurement of oil production. The State Governments that share in the royalties collected and Indian mineral owners will also benefit from assurance of more accurate oil measurement. The minimum standards established by this Order essentially are those that have been required but not officially promulgated by this Department and impose the same burden on all lessees and operators, regardless of the size of

the entity, on lands where the measurement of oil production is under the jurisdiction of the Bureau of Land Management. Therefore, the Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*

The Order does not affect current information collection and recordkeeping requirements. The information collection requirements contained in the Order have been approved by the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*, and assigned clearance numbers 1004–0134, 1004–0135, and 1004–0136.

List of Subjects in 43 CFR Part 3160

Government contracts, Indian lands—mineral resources, Mineral royalties, Oil and gas exploration, Oil and gas production, Public lands—mineral resources, Reporting requirements.

Under the authorities cited below, Part 3160, Group 3100, Subchapter C, Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below:

January 3, 1989.

James E. Cason,

Acting Assistant Secretary of the Interior

PART 3160—[AMENDED]

1. The authority citation for Part 3160 continues to read:

Authority: The Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 *et seq.*), the Mineral Leasing Act for Acquired Lands of 1974, as amended (30 U.S.C. 351–359), the Act of May 31, 1930 (30 U.S.C. 301–306), the Act of March 3, 1909, as amended (25 U.S.C. 396), the Act of May 11, 1938, as amended (25 U.S.C. 396a–396q), the Act of February 28, 1891, as amended (25 U.S.C. 397), the Act of May 29, 1924 (25 U.S.C. 398), the Act of March 3, 1927 (25 U.S.C. 398a–398e) the Act of June 30, 1919, as amended (25 U.S.C. 399), R.S. 441 (43 U.S.C. 1457), See also Attorney General's Opinion of April 2, 1941 (40 Op. Atty. Gen. 41), the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 471 *et seq.*), the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), the Act of December 12, 1980 (42 U.S.C. 6508), the Combined Hydrocarbon Leasing Act of 1981 (Pub. L. 97–78), the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 *et seq.*) and the Indian Mineral Development Act of 1982 (25 U.S.C. 2102 *et seq.*).

2. Section 3164.1(b) is amended by adding the following entry to the table:

§ 3164.1 Onshore Oil and Gas Orders.

* * * * *

(b) * * *

Order No.	Subject	Effective date	FR Reference	Supersedes
*	*	*	*	*
4.	Measurement of oil.	.....	.....	None.

Note: Numbers will be assigned by the Washington Office, Bureau of Land Management, to additional Orders as they are prepared for publication and added to this table.

Appendix—Text of Oil and Gas Order No. 4

Note: This appendix will not appear in the Code of Federal Regulations.

Contents

Onshore Oil and Gas Order No. 4
I. Introduction
A. Authority
B. Purpose
C. Scope
II. Definitions
III. Requirements
A. Required Recordkeeping
B. General
C. Oil Measurement by Tank Gauging
D. Oil Measurement by Positive Displacement Metering System
E. Oil Measurement by Other Methods or at Other Locations Acceptable to the Authorized Officer
F. Determination of Oil Volumes by Methods Other than Measurement
IV. Variances from Minimum Standards
Attachment
I. Sections from 43 CFR Subparts 3163 and 3165.

ONSHORE OIL AND GAS ORDER NO. 4

Federal and Indian Oil and Gas Leases—Measurement of Oil

I. Introduction

A. Authority

This Order is established pursuant to the authority granted to the Secretary of the Interior under various Federal and Indian mineral leasing statutes and the Federal Oil and Gas Royalty Management Act of 1982. This authority has been delegated to the Bureau of Land Management and is implemented by the onshore oil and gas operations regulations contained in Title 43 CFR Part 3160. Section 3164.1 specifically authorizes the Director, Bureau of Land Management, to issue Onshore Oil and Gas Orders when necessary to implement or supplement the operating regulations, and provides that all such Orders shall be binding on the lessees and operators of Federal and restricted Indian oil and gas leases which have been, or may hereafter be, issued.

Specific authority for the provisions contained in this Order is found at § 3162.7–1, *Disposition of Production*; § 3162.7–2, *Measurement of Oil*; and Subpart 3163, *Noncompliance and Assessment.*

B. Purpose

One purpose of this Order is to establish requirements and minimum standards for the measurement of oil, and to provide standard operating practices for lease oil storage and handling facilities, by the methods authorized in 43 CFR 3162.7–2, i.e., measurement by tank gauging, positive displacement metering system, or other methods acceptable to the authorized officer. Proper oil measurement ensures that the Federal Government and Indian mineral owners receive the royalties due, as specified in the governing oil and gas leases.

Another purpose of this Order is to establish abatement periods for corrective action when noncompliance with the minimum standards is detected. This Order also serves as notice to any party cited for noncompliance that it may request from the authorized officer an extension of the abatement period for any violation, provided that the request for extension is applied for and granted prior to the expiration of the abatement period previously allowed.

C. Scope

This Order is applicable to all Federal and Indian (except Osage) oil and gas leases. In addition, this Order is also applicable to all wells and facilities on State or privately owned mineral lands committed to a unit or communitization agreement that affects Federal or Indian interests, notwithstanding any provision of a unit or communitization agreement to the contrary.

II. Definitions

A. Authorized officer means any employee of the Bureau of Land Management authorized to perform the duties described in Groups 3000 and 3100. (See 43 CFR 3000.0–5.)

B. Barrel (bbl) means 42 standard United States gallons of 231 cubic inches each.

C. Business day means any day Monday through Friday excluding Federal holidays.

D. Cpl. means the correction factor for the effect of pressure on liquid.

E. Cps. means the correction factor for the effect of pressure on steel.

F. Ctl. means the correction factor for the effect of temperature on liquid.

G. Cts. The correction factor for the effect of temperature on steel.

H. INC means incident of noncompliance, which serves as a Notice of Violation under 43 CFR Subpart 3163.

I. Lessee means a person or entity holding record title in a lease issued by the United States. (See 43 CFR 3160.0–5).

J. Major violation means noncompliance which causes or threatens immediate, substantial, and adverse impact on public health and safety, the environment, production accountability, or royalty income (43 CFR 3160.0–5).

K. Minor violation means noncompliance which does not rise to the level of a "major violation" (43 CFR 3160.0–5).

L. Operating rights owner means a person or entity holding operating rights in a lease issued by the United States. A lessee also may be an operating rights owner if the operating rights in a lease or portion thereof have not been severed from record title (43 CFR 3160.0–5).

M. Operator means any person or entity, including but not limited to the lessee or operating rights owner, who has stated in writing to the authorized officer that it is responsible under the terms and conditions of the lease for the operations conducted on the leased lands or portions thereof (43 CFR 3160.0–5).

N. Oil, for the purposes of this Order, shall mean all liquid hydrocarbons produced from or for the benefit of jurisdictional leases, including condensate and oil from tar sands that is measured as a liquid.

N.1. Clean Oil/Pipeline Oil means crude oil or condensate that is of such quality that it is acceptable to normal purchasers.

N.2. Slop oil means crude oil that is of such quality that it is not acceptable to normal purchasers and which requires special treatment other than that which can economically be provided at the existing or modified facilities or portable equipment and is usually sold to oil reclaimers.

N.3. Waste oil means lease crude oil that has been determined by the authorized officer to be of such quality that it cannot be treated economically and put in a marketable condition with existing or modified lease facilities or portable equipment and cannot be sold to reclaimers and also has been determined by the authorized officer to have no economic value and for which royalty is not due.

III. Requirements

A. Required Recordkeeping

The operator shall keep all test data, meter reports, charts/recordings, or other similar records for 6 years from the date they were generated, or if involved in an audit or investigation, the records shall be maintained until the record holder is released by the Secretary from the obligation to maintain them. The authorized officer may request these records any time within this period. Records submitted shall include all additional information used to compute volumes so that computations may be verified.

B. General (See 43 CFR 3162.7–2)

1. The regulations at 43 CFR 3162.7–2 authorize oil measurement methods for production from leases, units, and communitization agreements subject to the jurisdiction of the Bureau of Land Management, as such jurisdiction is defined in 43 CFR 3161.1. The authorized oil measurement methods are tank gauging, positive displacement metering systems, and other methods acceptable to the authorized officer. The requirements and minimum standards for each of these methods are set forth below.

2. These requirements and minimum standards are based on the standards and practices recommended by the American Petroleum Institute (API). The API standards and recommended practices are considered by both the Department of the Interior and the oil and gas industry to be appropriate for proper oil measurement. The requirements and minimum standards set out herein are those necessary to promote conservation of natural resources and to ensure that oil production, except for waste oil, is properly measured for sales and allocation purposes, in order that the Federal Government and Indian mineral owners will receive the royalties due under governing oil and gas leases. When an infraction of the minimum standards in this Order is discovered it will be considered noncompliance and an incident of noncompliance (INC) will be issued. Operators who discover noncompliance with these minimum standards and take immediate corrective action will not be issued an INC. If the authorized officer or his representative is present when an operator discovers a malfunction or does not use correct procedures as specified in this Order, an INC will be issued unless immediate corrective action is taken.

A major violation as defined in this Order will generally require an immediate shut-in of the metering device. However, where the non-recoupable loss is not significant or where damage to the resource is likely to occur if a shut-in is required, an abatement period of 24 hours may be given.

The intent of these minimum standards is to ensure that when equipment malfunctions that could result in inaccurate measurement occur, that proper corrective actions are taken, the authorized officer is notified, and an amended production report is submitted.

Equipment failure that is discovered by the operator and promptly corrected will not be considered a violation. However, the incidents of noncompliance that may result from equipment failure are considered violations, and a partial list is as follows:

Failure to install equipment properly.

Failure to repair or correct equipment malfunction properly or in a timely manner.

Failure to submit report of alternate method of measurement for sales.

Failure to submit amended production reports in a timely manner.

Failure to adhere to the minimum standard procedures specified in this Order.

The use of improper equipment, when discovered, will be considered a violation, and an INC will be issued.

The use of improper procedures will be considered a violation and, when witnessed by the authorized officer or his representative, immediate corrective action will be required. In the event that proper procedures are then used as required by this Order, and prior to completing the operation, calibration, or proving, the violation will be considered as properly corrected. In this case, although the violation will be documented in the agency files, no formal INC will be issued.

All future sales and allocation facilities and sales or allocation facilities in existence on the effective date of this Order, unless covered by a valid variance, shall meet the minimum standards prescribed in this Order.

Meter installations constructed in accordance with the API standards in effect at that time shall not automatically be required to retrofit to meet revised API standards. The Bureau will review any revised API standards, and when deemed necessary will amend the Order accordingly through the rulemaking process.

Any variances from these requirements and minimum standards shall be in accordance with section IV of this Order.

3. A violation of a minimum standard established by this Order shall be abated within the time period specified.

Where abatement is required "prior to sales or removal", this means that necessary actions shall be taken so that no oil may be removed beyond the measurement point until properly measured.

If any such violation is not abated within the required period, action shall be initiated in accordance with 43 CFR Subpart 3163.

C. Oil Measurement by Tank Gauging

Oil measurement by tank gauging shall accurately compute the volume of oil withdrawn from a properly calibrated sales tank by measuring the height of the oil level in the tank before delivery (opening gauge) and then measuring the height of the oil level in the tank after delivery (closing gauge). The opening and closing gauges are then used with the tank calibration charts (tank tables) to compute accurately the volume of oil withdrawn. Gauging may be accomplished by measuring the height of the oil level from the tank bottom or a fixed datum plate upward to the surface of the oil in the tank (innage gauging) or by measuring from a fixed reference point at the top of the tank downward to the surface of the oil in the tank (outage gauging). Samples shall be taken from the oil before gauging to determine API oil gravity and sediment and water content. Prior to gauging, the temperature of the oil shall be determined from measurements made in the tank. The measured oil volume shall then be corrected for sediment and water content, and to the standard sales temperature of 60° F.

The following requirements and minimum standards shall be accomplished in accordance with API Standard 2545 (ANSI/ASTM D 1085) "Method of Gauging Petroleum and Petroleum Products," 1985, reaffirmed in 1987, and (ANSI/ASTM D–1250), Tables 5A and 6A.

1. *Sales Tank Equipment.* Each oil storage tank to be used for oil sales by tank gauging shall be properly equipped for such gauging, using the "API Recommended Practice for Setting, Connecting, Maintenance, and Operation of Lease Tanks, API RP 12 R1," 1986. Tanks shall also be connected, maintained, and operated so as to comply with the Site Security Regulations, 43 CFR 3162.7–5, and Onshore Order No. 3, and sales tanks shall meet the following requirements:

a. Each sales tank shall be equipped with a pressure-vaccum thief hatch and/or vent-line valve.

Violation: Major.

Corrective Action: Install proper thief hatch and/or vent line valve or drain.

Abatement Period: 30 days.

b. Each sales tank shall be set and maintained level and free of distortion in accordance with the above-referenced API recommended practice.

Violation: Major.

Corrective Action: Level tank.

Abatement Period: Prior to sales.

c. Pursuant to API Standard 2545 (ANSI/ASTM D 1085), "Method of Gauging Petroleum and Petroleum Products," October 1965 (reaffirmed August 1987), each tank shall be equipped with a gauging reference point, with the height of the reference point stamped on a fixed bench-mark plate or stenciled on the tank near the gauging hatch.

Violation: Minor.

Corrective Action: Affix a gauging reference point in gauging hatch and stamp on bench-mark plate or stencil on tank near gauging hatch.

Abatement Period: 30 days.

2. *Sales Tank Calibrations.* Each oil storage tank to be used for oil sales by tank gauging shall be accurately calibrated for such gauging, using the API Standard 2550 (ANSI/ASTM D 1220), "Method for Measurement and Calibration of Upright Cylindrical Tanks," 1965, reaffirmed August 1987, and API RP 2556, "Correcting Gauge Tables for Incrustation", August 1968. The following minimum standards shall be satisfied:

a. Sales tank capacities shall be determined by actual tank measurements by the method known as "tank calibration," and in accordance with the above-referenced API Standards.

Violation: Minor.

Corrective Action: Make capacity determination and develop appropriate capacity table.

Abatement Period: 60 days.

b. A sales tank shall be recalibrated if it is relocated or repaired or the capacity is changed through denting, damage, or installation or removal of interior components, or otherwise.

Violation: Minor.

Corrective Action: Recalibrate tank and develop new (revised) capacity table.

Abatement Period: 60 days.

c. Calibration charts (tank tables) shall be submitted to the authorized officer on request.

Violation: Minor.

Corrective Action: Submit tables to authorized officer.

Abatement Period: 30 days.

3. *Oil Sampling.* Sampling of oil to be sold from sales tanks is required and shall be conducted in such fashion as to yield a representative sample of the oil for purposes of determining the physical properties of the oil, following the "API Manual of Petroleum Measurement Standards, Chapter 8.1—Manual Sampling" (ASTM D 4057) October 1981 (Reaffirmed August 1987), or Chapter 8.2—Automatic Sampling of Petroleum and Petroleum Products, April 1983 (Reaffirmed August 1987), and shall meet the following minimum standard. All samples shall be taken from the contents of the sales tank prior to gauging, after allowing the tank contents to settle for at least 30 minutes following isolation of the tank, in accordance with the procedures specified in the above-referenced API standard.

Violation: Major.

Corrective Action: Repeat sampling procedure.

Abatement Period: Prior to sales or removal.

4. *Sales Tank Gauging.* Gauging of oil sales tanks is required and shall be accomplished in such fashion as to measure the contents of the tank accurately, following API Standard 2545 (ANSI/ASTM D 1085), "Method of Gauging Petroleum and Petroleum Products" 1965 (Reaffirmed August 1987), and shall meet the following minimum standards.

a. Gauging shall be accomplished using gauging tapes made of steel or corrosion-resistant material with graduation clearly legible, not kinked or spliced, and traceable to the standards of the National Bureau of Standards and certified as accurate by either the manufacturer or an independent testing facility. Working tapes, when checked against a tape certified to NBS standards, will be allowed as NBS traceable.

Violation: Major.

Corrective Action: Replace tape.

Abatement Period: Prior to sales or removal.

b. Acceptable gauging requires 2 identical gauges to the nearest ¼ inch for tanks with a capacity of less than 1,000 barrels, and 2 identical gauges to the nearest ⅛ inch for tanks with a capacity of 1,000 barrels or more.

Violation: Major.

Corrective Action: Repeat gauging until 2 identical readings are obtained.

Abatement Period: Prior to sales or removal.

c. The proper bob for innage gauging or outage gauging shall be used in accordance with the above-referenced API standard.

Violation: Major.

Corrective Action: Repeat gauging using proper bob.

Abatement Period: Prior to sales or removal.

5. *Oil Gravity.* Tests for oil gravity are required, following the "API Manual of Petroleum Measurement Standards Chapter 9—Density Determination" (ASTM D 1298–80) 1981, and (ASTM D 287–82) "Standard Test Method for API Gravity of Crude Petroleum and Petroleum Products" (Hydrometer Method), and shall be performed on a representative sales tank oil sample obtained following "API Manual of Petroleum Measurement Standards Chapter 8.1, "Manual Sampling of Petroleum and Petroleum Products" (ASTM D 4057) October 1981 (Reaffirmed August 1987). Gravity tests shall meet the following minimum standards.

a. All gravity determinations shall be completed before oil sales are made.

Violation: Major.

Corrective Action: Obtain sample from sales tank and determine oil gravity.

Abatement Period: Prior to sales or removal.

b. Accuracy of all instruments used to determine oil gravity for oil sales purposes shall be traceable to the standards of the National Bureau of Standards and certified as accurate by either the manufacturer or independent testing facility.

Violation: Major.

Corrective Action: Replace instruments.

Abatement Period: Prior to sales or removal.

c. The instrument used to obtain the oil gravity shall be clean, with no loose shot weights or detached gravity scale.

Violation: Major.

Corrective Action: Clean and/or replace hydrometer.

Abatement Period: Prior to sales or removal.

d. The instrument used to obtain the oil gravity shall be calibrated for a gravity range that includes the observed gravity of the oil sample being tested.

Violation: Major.

Corrective Action: Repeat gravity tests using hydrometer with proper scale.

Abatement Period: Prior to sales or removal.

e. Temperatures shall be measured and recorded to the nearest 1.0 °F.

Violation: Major.

Corrective Action: Repeat test, measuring and recording temperature to nearest 1.0 °F.

Abatement Period: Prior to sales or removal.

f. Liquid density (gravity) will be measured and recorded to the nearest 0.1 °API gravity, making any necessary meniscus correction. The observed gravity shall be corrected to 60 °F. using Table 5A, "Table 5A—Generalized Crude Oils" and JP–4, Correction of Observed Gravity to API Gravity at 60 °F.

Violation: Major.

Corrective Action: Repeat test, measuring and recording gravity to nearest 0.1 ° API gravity after making necessary correction for fluid meniscus.

Abatement Period: Prior to sales or removal.

6. *Tank Temperature.* Determination of the temperature of oil contained in a sales tank is required following the "API Standard 2543 Method of Measuring the Temperature of Petroleum and Petroleum Products" (ANSI/ASTM D–1086) October 1965 (Reaffirmed August 1987), and shall meet the following minimum standards:

a. Accuracy of all thermometers used for oil sales purposes shall be traceable to the standards of the National Bureau of Standards and certified as accurate by either the manufacturer or independent testing facility. Working thermometers shall be checked against a thermometer certified as accurate to NBS standards and their use shall be permitted.

Violation: Major.

Corrective Action: Replace thermometer.

Abatement Period: Prior to sales or removal.

b. Thermometers shall be kept clean and free of mercury separation.

The temperature measurements shall be taken by immersing the thermometer to the approximate vertical center of the fluid column, not less than 12 inches from the shell of the tank, for a minimum of 5 minutes and then read and recorded to the nearest 1° F.

Violation: Major.

Corrective Action: Replace thermometer or repeat measurement as prescribed.

Abatement Period: Prior to sales or removal.

7. *Sediment and Water (S & W).* Determinations of the sediment and water content of oil contained in sales tanks is required following the "API Manual of Petroleum Measurement Standards Chapter 10—Sediment and Water Section 4—Determination of Sediment and Water in Crude Oils by the Centrifuge Method (Field Procedure), Second Edition, May, 1988 (ASTM 96–88), and shall meet the following minimum standards:

a. A thoroughly mixed oil sample-solvent combination, prepared in accordance with the procedure described in the above-referenced API Manual, shall be heated to at least 140° F. prior to centrifuging.

Violation: Major.

Corrective Action: Repeat procedures using the defined standards.

Abatement Period: Prior to sales or removal.

b. The heated sample shall be whirled in the centrifuge for not less than 5 minutes, and at the conclusion of centrifuging, the temperature shall be a minimum of 115° F. without water-saturated diluent, and 125° F. with water-saturated diluent.

Violation: Major.

Corrective Action: Repeat test as prescribed.

Abatement Period: Prior to sales or removal.

c. The combined volume of water and sediment at the bottom of the 100 ml. centrifuge tube shall be read:

(1) To the nearest 0.05 ml. in the range from 0.1 to 1 ml.

(2) To the nearest 0.1 ml. if above the 1 ml. graduation.

(3) Estimated to the nearest 0.025 ml. if the volume is less than 0.1 ml.

The water and sediment volume in the centrifuge tube thus determined shall be multiplied by the appropriate factor for the centrifuge tube size and oil sample-solvent ratio, as specified in the above-referenced API Manual, and the product recorded as the percentage of water and sediment.

Violation: Major.

Corrective Action: Repeat test as specified or repeat procedures using specified factors.

Abatement Period: Prior to sales or removal.

D. Oil Measurement by Positive Displacement Metering System

Oil measurement by a positive displacement metering system, for purposes of oil sales, shall be accomplished by a Lease Automatic Custody Transfer (LACT) unit designed to provide for the unattended transfer of liquid hydrocarbons from a production facility to the transporting carrier while providing proper and accurate means for the determination of net standard volume and quality, while also providing for fail-safe and tamper proof operations in accordance with the regulations at 43 CFR 3162.7–4 and Onshore Order No. 3.

A positive displacement meter is one which registers the volume passing through said meter by a system which constantly and mechanically isolates the flowing liquid into segments of known volume.

LACT unit design shall follow API Spec. 11N "API Specifications for Lease Automatic Custody Transfer (LACT) Equipment," 1979, and API Manual of

Petroleum Measurement Standards Chapter 6—Metering Assemblies, Section 1, LACT Systems, February 1981 (Reaffirmed August 1987). LACT units shall be constructed and operated so as to satisfy the following requirements and minimum standards:

1. *LACT Unit Components and General Operating Requirements.*

a. Each LACT unit shall include all of the following listed components as a minimum:

(1) Charging pump and motor.

(2) Sampler, composite sample container and mixing system.

(3) Strainer.

(4) Positive displacement meter.

(5) Meter proving connections.

(6) Meter backpressure valve and check valve.

(7) Air eliminator.

(8) Diverter valve or shut-off valve.

(9) Sediment and Water Monitor.

(10) Automatic Temperature/Gravity Compensator.

Violation: Major: a.1., 2., 4., 5., 6., and 10.

Corrective Action: Install component.

Abatement Period: Prior to sales or removal.

Violation: Minor: a.3., 7., 8., and 9.

Corrective Action: Install component.

Abatement Period: 30 days.

b. All components of LACT unit shall be accessible for reasonable inspection by the authorized officer.

Violation: Minor.

Corrective Action: Provide authorized officer with means of access to LACT.

Abatement Period: 30 days.

c. The authorized officer shall be notified of any LACT unit failure, such as electrical, meter, or other failure that results in use of an alternate method of measurement.

Violation: Minor.

Corrective Action: Notify authorized officer of alternate method used.

Abatement Period: By 5th business day following use of alternate method.

d. Any and all tests conducted on oil samples extracted from LACT samplers for determination of oil gravity and S & W content shall meet the same requirements and minimum standards specified in this Order with respect to oil measurement by tank gauging for all measurements taken of temperature, gravity, and S & W content (section III C.5., 6., and 7.)

Violation: Major.

Corrective Action: Report tests for gravity, temperature, and/or S & W content per section III C.5., 6., and 7 minimum standards.

Abatement Period: Prior to sales or removal.

2. *Operating Requirements for LACT Unit Components.* All required LACT unit components shall be operated to satisfy the following minimum standards:

a. *Charging pump and motor.* The LACT unit shall include an electrically driven pump rated for a discharge pressure and rate that are compatible with the rating for the meter used and sized to assure turbulent flow in the LACT main stream piping.

Violation: Major.

Corrective Action: Install properly designed pump and motor.

Abatement Period: Prior to sales or removal.

b. *Sampler.* The sampler probe shall extend into the center ⅓ of the flow piping in a vertical run, at least 3 pipe diameters downstream of any pipe fitting. The probe shall always be in a horizontal position.

Violation: Major.

Corrective Action: Install component properly.

Abatement Period: Prior to sales or removal.

c. *Composite Sample Container.* The composite sample container shall be capable of holding sample under pressure and shall be equipped with a vapor proof top closure and operated to prevent the unnecessary escape of vapor, and the container shall be emptied upon completion of sample withdrawal.

Violation: Major.

Corrective Action: Install component properly, and empty after each sample withdrawal.

Abatement Period: Prior to sales or removal.

d. *Mixing System.* The mixing system shall completely blend the sample into a homogeneous mixture before and during the withdrawal of a portion of the sample for testing.

Violation: Major.

Corrective Action: Repair mixing system.

Abatement Period: Prior to sales or removal.

e. *Strainer.* The strainer shall be constructed so that it may be depressurized, opened, and cleaned, be located upstream of the meter, and be made of corrosion resistant material of a mesh size no larger than ¼ inch.

Violation: Minor.

Corrective Action: Replace with properly designed strainer, and install properly.

Abatement Period: 30 days.

f. *Positive Displacement Meter.* The meter shall register volumes of oil passing through said meter determined by a system which constantly and mechanically isolates the flowing oil into segments of known volume, and be equipped with a non-resettable totalizer.

Violation: Major.

Corrective Action: Replace or repair meter or non-resettable totalizer.

Abatement Period: Prior to sales or removal.

g. *Meter Proving Connections.* All meter proving connections shall be installed downstream from the LACT meter, with the line valve(s) between the inlet and outlet of the prover loop having a double block and bleed design feature to provide for leak testing during proving operations.

Violation: Major.

Corrective Action: Relocate prover loops downstream from LACT meter, and install block and bleed valve as specified.

Abatement Period: Prior to proving LACT.

h. *Back Pressure and Check Valves.* The back pressure valve and check valve shall be installed downstream from the LACT meter.

Violation: Major.

Corrective Action: Install back pressure valve and check valve downstream from LACT meter.

Abatement Period: Prior to sales or removal.

i. *Air Eliminator.* The air eliminator shall be installed and prevent air/gas from entering the meter.

Violation: Minor.

Corrective Action: Install air eliminator.

Abatement Period: 30 days.

j. *Diverter Valve/Shut-off Valve.* The diverter valve/shut-off valve shall be activated by the Sediment and Water Monitor so that the valve moves to divert flow to the clean oil discharge only when it receives a positive signal, or provide a shut-off valve configured to shut off oil delivery upon failure to receive a positive signal from the Sediment and Water Monitor.

Violation: Minor.

Corrective Action: Install diverter/shut-off valve.

Abatement Period: 30 days.

k. *Sediment and Water (S and W) Monitor.* The Sediment and Water Monitor shall be an internally plastic coated capacitance probe, no smaller in diameter than the skid piping, and shall be mounted in a vertical pipe located upstream from the diverter valve and the meter.

Violation: Minor.

Corrective Action: Install S and W Monitor.

Abatement Period: 30 days.

l. *Automatic Temperature/Gravity Compensator.* The automatic temperature/gravity compensator shall be sized according to the fluid characteristics being measured.

Violation: Major.

Corrective Action: Install automatic temperature/gravity compensator.

Abatement Period: Prior to sales or removal.

3. *Sales Meter Proving Requirements.* LACT positive deplacement meters shall be proved periodically. Meter provings shall follow "API Manual of Petroleum Measurement Standards, Chapter 4—Proving Systems," 1978, and shall meet the following minimum standards.

a. The types of meter provers to be used, and the calibration requirements are as follows:

(1) The acceptable types of meter provers are pipe provers, tank provers, master meters, or other API recognized meter provers.

Violation: Minor.

Corrective Action: Prove again with acceptable meter prover.

Abatement Period: 30 days.

(2) The prover shall have available at the site for review by the authorized officer, evidence that the prover has been calibrated, with the certified calibration date identified by some unique number, i.e., serial number assigned to and inscribed on the prover. The calibration evidence for a pipe or tank prover shall show the certified volume as determined by the water draw method.

If a master meter is used, the most recent calibration report for said master meter shall be available. Said calibration report shall show that the master meter has been calibrated in accordance with API requirements, has an operating factor within the range from 0.9900 to 1.0100, and that 5 consecutive runs have been matched within a tolerance of 0.0002.

Violation: Minor.

Corrective Action: Provide calibration certification.

Abatement Period: Prior to proving.

b. Minimum Proving Frequency: For all sales and allocation meters, the accuracy of the measuring equipment at the point of delivery or allocation shall be tested following initial meter installation or following repair, and if proven adequate, at least quarterly thereafter unless a longer period is approved in writing by the authorized officer.

Violation: Minor.

Corrective Action: Notify authorized officer of scheduled proving and prove meter.

Abatement Period: 10 business days.

(1) In the event that the total throughput exceeds 100,000 bbl per month, then proving shall be accomplished monthly.

Violation: Minor.

Corrective Action: Notify authorized officer of scheduled proving.

Abatement Period: By the 10th business day after discovery of the violation.

c. In Establishing the Operating Meter Factor:

(1) At least 6 runs shall be made. Of these 6 runs, 5 consecutive runs shall match within a tolerance of 0.0005 (0.05 percent) between the highest and the lowest reading.

Violation: Major.

Corrective Action: Notify authorized officer and re-prove meter.

Abatement Period: 10 business days.

(2) The arithmetic average of these 5 consecutive runs shall be used for computation of the meter factor.

Violation: Minor.

Corrective Action: Compute meter factor using arithmetic average of the 5 consecutive runs.

Abatement Period: Prior to completion of proving.

(3) Meter factor computations shall also include the correction for the effect of pressure on steel (Cps) for provers; and the correction for the effect of temperature on steel (Cts) for provers; and the correction for the effect of temperature on liquid (Ctl), and the correction for the effect of pressure on liquid (Cpl). The Cps and Cts correction factors shall be determined using the "API Manual of Petroleum Measurement Standards, Chapter 12, Section 2," 1981, or latest revised standard, and the Ctl correction factor shall be obtained from the "API Standard 2540, Chapter 11.1, Volume I (ASTM D 1250–80), Table 6A," 1980, or latest revised standard, and the Cpl correction factor shall be obtained from the API Manual of Petroleum Measurement Standards, Chapter 11.2.1.

Violation: Minor.

Corrective Action: Include proper correction factors.

Abatement Period: Prior to completion of meter proving.

(4) The initial meter factor for a new or repaired meter shall be within the range from 0.9950 to 1.0050, unless the deviation can be justified to the satisfaction of the authorized officer.

Violation: Minor.

Corrective Action: Replace/repair/re-prove meter or justify deviation from the brackets 0.9950 to 1.0050 to the authorized officer.

Abatement Period: Prior to completion of proving.

4. *Excessive Meter Factor Deviation.* Excessive meter factor deviation may be evidence of meter malfunction, and corrective action shall be taken upon discovery of meter malfunction. However, if the operator determines that the meter did not, in fact, malfunction, the lessee/operator shall submit, for approval by the authorized officer, a report as to the findings and reasons for the excessive meter factor deviation and the determination of no meter malfunction. In the event a malfunction occurred, the meter shall be immediately removed from service, checked for damage or wear, adjusted and/or repaired, and re-proven prior to return to service. The arithmetic average of the malfunction factor and the previous factor shall be applied to the production measured through the meter between the date of the previous factor and the date of the malfunction factor. Malfunction meter factors shall be clearly indicated on the proving report, which shall also contain all appropriate remarks regarding subsequent repairs and/or adjustments.

The minimum standards for evidence of meter malfunction, and corrective action required, are as follows:

Meter Factor Deviation.

(1) Deviation in a meter factor shall not exceed ±0.0025 since the last proving of the meter unless explained by changing conditions, i.e., temperature or gravity or flow-rate.

Violation: Minor.

Corrective Action: Repair or replace meter, or submit report to authorized officer for approval of the findings and reasons for the determination that there is no meter malfunction.

Abatement Period: Prior to completion of meter proving.

(2) A meter factor shall not exceed 1 percent above or below unity, i.e. outside of the range from 0.9900 to 1.0100.

Violation: Minor.

Corrective Action: Same as (1), above.

Abatement Period: Prior to completion of meter proving.

5. *Meter Reporting Requirements:* All meter provings, meter failures, and volume adjustments following meter malfunction shall be reported to the authorized officer, as follows:

Meter Proving Reports. The meter proving report shall be filed on one of the forms set out in "API Manual of Petroleum Measurement Standards. Chapter 12—Calculation of Petroleum Quantities, Section 2—Calculation of Liquid Petroleum Quantities Measured by Turbine or Displacement Meters," 1981 (Reaffirmed Aug. 1987). Any similar format is acceptable provided all required data are included and proper calculation sequence is maintained.

Each meter proving report shall be identified by lease number, communitization agreement number, or unit participating area name, and the location of the facility.

Each meter proving report shall be filed with the authorized officer no later than 10 working days following the meter proving.

Violation: Minor.

Corrective Action: Submit proper proving report to authorized officer.

Abatement Period: File with authorized officer no later than the 10th business day.

E. Oil Measurement by Other Methods or at Other Locations Acceptable to the Authorized Officer

Any method of oil measurement other than tank gauging or positive displacement metering system, requires prior approval, based on applicable API standards, by the authorized officer. Other measurement methods include, but are not limited to: Turbine metering systems, Measurement by calibrated tank truck, Measurement by weight, Net oil computer.

The requirements and minimum standards for oil measurement on the lease, unit, unit participating area, or communitized area by an alternate method, or at a location off the lease, unit, unit participating area, or communitized area by either an authorized or an alternate method of measurement, are as follows:

1. *Measurement on the Lease, Unit, Unit Participating Area, or Communitized Area.*

An application for approval of an alternate oil measurement method shall be submitted to the authorized officer and written approval obtained before any such alternate oil measurement method is operated. Any lessee/operator requesting approval of any alternate oil sales measurement system shall submit performance data, actual field test results, or any other supporting data or evidence acceptable to the authorized officer, that will demonstrate that the proposed alternate oil sales measurement system will meet or exceed the objectives of the applicable minimum standard or does not adversely affect royalty income or production accountability.

Violation: Major.

Corrective Action: Shut in operations. Submit application for approval of desired method of oil measurement.

Abatement Period: Prior to sales or removal.

2. *Measurement at a Location Off the Lease, Unit, Unit Participating Area, or Communitized Area.*

a. An application for off-lease measurement shall be submitted to the authorized officer and written approval obtained before any such off-lease oil measurement facilities are installed or operated. The application for written approval of off-lease measurement shall justify location of the measurement facilities at the off-lease location desired before approval will be granted, but no additional approval as to the oil measurement method is required, provided measurement is to be accomplished by tank gauging or positive displacement metering system, pursuant to the requirements and minimum standards of this Order.

Violation: Minor.

Corrective Action: Submit application for written approval of off-lease measurement.

Abatement Period: 20 days.

b. If oil measurement is to be accomplished at a location off the lease, unit, unit participating area, or communitized area by any alternate measurement method (any method other than tank gauging or positive displacement metering system), then the application, in addition to justifying the location of the measurement facilities, shall also demonstrate the acceptability of the alternate measurement method, pursuant to section III.E.1.

Violation: Major.

Corrective Action: Submit application for approval of off-lease measurement and approval of desired method of measurement.

Abatement Period: Prior to sales or removal.

F. Determination of Oil Volumes by Methods Other Than Measurement

Pursuant to 43 CFR 3162.7–2, when production cannot be measured due to spillage or leakage, the amount of production shall be determined in accordance with the methods approved or prescribed by the authorized officer. This category of production includes, but is not limited to, oil which is classified as slop oil or waste oil.

The minimum standards for determining the volume of oil that cannot be measured are as follows:

1. No oil located in an open pit or sump, in a stock tank, in a production vessel or elsewhere, may be classified or disposed of as waste oil unless it can be shown, to the satisfaction of the authorized officer, that it is not economically feasible to put the oil into marketable condition.

Violation: Major.

Corrective Action: Put oil into marketable condition.

Abatement Period: 10 working days.

2. No slop oil may be sold or otherwise disposed of without prior approval from the authorized officer. Following the sale or disposal, the authorized officer shall be notified as to the volume sold or disposed, and the method used to compute the volume.

Violation: Major.

Corrective Action: Submit complete report of sale.

Abatement Period: 24 hours.

IV. Variances From Minimum Standards

An operator may request that the authorized officer approve a variance from any of the minimum standards prescribed in section III. All such requests shall be submitted in writing to the appropriate authorized officer and shall provide information as to the circumstances that warrant approval of the variance(s) requested and the proposed alternative means by which the related minimum standard(s) will be satisfied. The authorized officer, after considering all relevant factors, shall approve the requested variance(s) on making a determination that the proposed alternative(s) meet or exceed the objectives of the applicable minimum standard(s), or does not adversely affect royalty income or production accountability. In addition, approval may be given orally by the authorized officer before the lessee/operator initiates actions that require a variance from minimum standards. The oral request, if granted, shall be followed by a written request not later than the fifth business day following oral approval, and written approval will then be appropriate.

The authorized officer may also on his/her motion issue NTLs that establish modified standards or variances for specific geographic areas of operations.

After notice to the operator the authorized officer may also require compliance with standards that exceed those contained in this Order whenever such additional requirements are necessary to achieve protection of royalty income or production accountability. The rationale for any such additional requirements shall be documented in writing to the lessee/operator.

Attachment

I. Sections from 43 CFR Subparts 3163 and 3165 (not included with Federal Register publication).

[FR Doc. 89–3885 Filed 2–23–89; 8:45 am]

BILLING CODE 4310–84–M

2618

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3160

[Circular No. 2618; AA-610-88-4111-02]

Onshore Oil and Gas Operations, Federal and Indian Oil and Gas Leases; Onshore Oil and Gas Order No. 5, Measurement of Gas

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking issues Onshore Oil and Gas Order No. 5 under 43 CFR 3164.1. This Order implements and supplements requirements found in 43 CFR Part 3160 relating to the measurement of gas produced under the terms of Federal and Indian (except Osage) oil and gas leases, as well as gas produced from State or privately owned when Federal and/or Indian leases receive a share of such production under the terms of an approved agreement. The Order addresses gas measurement by orifice meter and gas measurement by other methods acceptable to the authorized officer of the Bureau of Land Management. Gas measurement by electronic flow computers, utilizing an orifice, which calculate volume using the equations specified by the American Gas Association (AGA) Committee Report No. 3, may be approved by the Bureau of Land Management (BLM) State Office having jurisdiction over the producing area. The Bureau of Land Management's existing internal guidelines on the subject of gas measurement were never formalized in a Notice to Lessees and Operators. Thus, this Order has no direct predecessor.

EFFECTIVE DATE: March 27, 1989; this order is applicable March 27, 1989 for new facilities, August 23, 1989 for existing facilities measuring 200 MCF or more per day of gas, and February 26, 1990 for existing facilities producing less than 200 MCF per day of gas.

ADDRESS: Suggestions or inquiries may be submitted to: Director (610), Bureau of Land Management, Room 601, Premier Building, 1800 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Richard T. Hunter, (303) 236-1750, or Sie Ling Chiang (202) 653-2127.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management published the rulemaking proposing Onshore Oil and Gas Order No. 5 in the Federal Register on February 3, 1988 (53 FR 3158), asking for comments on the proposed rulemaking by April 4, 1988. At the request of several respondents, BLM published a Federal Register Notice on April 6, 1988 (53 FR 11318), which extended the comment period through April 19, 1988.

During the comment period, written comments were received from 44 sources: 32 from business interests related to the oil and gas industry, 6 from offices of Federal agencies, 5 from associations, and 1 from a State agency. The time and effort spent in reviewing the proposed rulemaking and the highly detailed responses offering constructive and skillful suggestions for improvement are appreciated. Many of the comments, both technical and editorial, were adopted and are reflected in the final rulemaking.

Discussion of General Comments

A number of comments supported formalizing measurement requirements and stated that promulgating rules will facilitate a better understanding of the requirements. Three comments objected to the entire concept of the proposed rulemaking, arguing that it is unnecessary. One comment stated that the proposed rulemaking in its present form was not authorized by the statutes. The necessary authority for the rulemaking exists at 30 U.S.C. 1711 and 30 U.S.C. 189. The Order will benefit overall both the oil and gas companies and the various government agencies by providing the minimum standards critical to accurate measurement and reporting of production nationwide.

Custody Transfer/Allocation Meters

A number of comments stated that the proposed rule should apply only to custody transfer measurements and not allocation measurements. They argued that the proposed rules are for application to single phase, homogeneous oil, gas, or condensate flows that have been cleaned up and stabilized for commercial pipeline transport. The comments also argued that allocation meters may involve the two-phase flow of vapor and liquids and, therefore, the allocation meter should not be held to the same tolerances as the custody transfer or sales meter. A custody transfer or sales meter is one from whose measurements royalty is determined directly. An allocation meter is a meter whereby production is measured and credited to a lease(s) or well(s). BLM has the responsibility to designate or accept measurement points (meters) from whose measurements royalties will be determined. All such designated measurement points are required to meet the minimum standards of this Order. The designated or accepted measurement point may be a custody transfer meter, a sales meter or an allocation meter. In any case, the meters are required to be measuring single phase flow. BLM requires that all production removed or sold from the lease be placed into marketable condition using appropriately sized and maintained production equipment, and that the oil, water, and gas be separated prior to measurement or that a variance be approved. To make it clear that the proposed standards apply to allocation as well as sales meters, the phrase "and allocation" has been added to paragraph 2 of section III-B.

Responsibility for Proper Measurement

Several comments were received expressing concern that the proposed Order would hold the lessee/operator responsible for the handling and proper measurement of lease production, when in some cases the sales meters are owned and operated by the purchaser/transporter. In such cases, the operator may not have control over the measurement equipment. Most comments urged that the responsibility for proper sales measurement be placed on the owner of the sales meter and that only the responsibility for allocation measurement should be placed on the lessee/operator. It is recognized that the purchaser often owns and maintains the custody transfer/sales meter. However, requirements for proper measurement are normally included in the purchase contract. Existing regulations hold the lessee/operator responsible for assuring that all lease oil and gas production operations, including proper measurement, comply with Department of the Interior regulations, whether conducted by the lessee or by parties having contractual agreements with the lessee. This Order does not change the responsibility of the lessee. The rationale is that (1) the standards in this Order are generally AGI standards, (2) normal sales contracts require the purchaser to maintain the sales meter properly, and (3) historically, holding the lessee/operator responsible for proper measurement has not created significant problems for the operators or purchasers. It is recognized that the operator is often personally unable to correct violations resulting from meter problems, and this has been taken into account in setting abatement periods. In addition, 43 CFR 3163.2(f)(1) provides civil penalties up to $25,000 for any person who knowingly or willfully prepares, maintains or submits false, inaccurate or misleading reports. This regulation applies to the purchaser as well as the lessee/operator.

Electronic Flow Computers

A few comments stated that electronic flow computers were widely used and accepted by both the purchaser and seller, and recommended that the use of this type of secondary element be authorized without case-by-case approval. It is recognized that electronic flow computers are accurate and when properly installed and used with an orifice will measure gas volumes correctly. However, because this type of secondary element is still not proven over long periods of time, the capabilities of each instrument type, including all limitations, will be subject to a review by appropriate BLM personnel and approval by the State Director.

AGA Standards

Many comments referred to AGA Committee Report No. 3, most of them calling attention to the desirability of using the American National Standards Institute (ANSI) and API designation (ANSI/API 2530) in conjunction with AGA or in place of AGA. One comment suggested that, in order to ensure that no confusion exists as to the standard to be used, Section III should state the full title as follows: ANSI/API 2530–1985 hereafter referred to as AGA Committee Report No. 3, Second Edition. This comment was adopted as a useful clarification. Other comments suggested adding several additional references and stated that AGA Report No. 3 was insufficient for gas measurement. It is recognized that AGA Report No. 3 includes the required method for computing gas volumes, and that other data required are included in numerous other publications by the Gas Processors Association (GPA). However, it is not appropriate to expand the order to include all of the references.

Phase-in Period

Specific comments were requested regarding a phase-in period of time after which this Order will become effective. Seventeen comments were received stating that a phase-in period is necessary to avoid shut-in of production and in some cases premature abandonment of some wells, and to allow time to train field personnel. The recommended time for the phase-in ranged from six months to five years. It is agreed that a phase-in period is appropriate where the installation of new equipment or the modification of existing equipment, and the training of field personnel, is required. The phase-in period will also allow those companies aspiring to obtain justifiable variances to do so and be in full compliance on the effective date of this Order. Accordingly, all sales and allocation facilities measuring 200 MCF per day or more are required to be in full compliance within six months; and all other sales and allocation metering facilities are required to be in compliance within 12 months or to be in possession of a valid variance issued by the authorized officer. The phase-in periods will commence on the date this Order is published as a final rulemaking in the Federal Register.

During the phase-in period until the effective date of the Order, BLM will continue to inspect and enforce all current measurement standards. The phase-in period is intended to allow time for the operator to bring all operations, including all existing equipment, specified procedures, and reporting practices into full compliance, and does not in any way relieve the operator from complying with the orders of the authorized officer, or from being subject to the existing laws, regulations, and practices under which BLM has carried out the inspection and enforcement functions in the past.

Exemptions for Low Volume Production

Some wells producing gas may not be able to support compliance with some of the minimum standards for gas measurement. Numerous comments requested exemptions for wells producing low volumes of gas, fields with declining production and a projected production life of five years or less, and wells drilled into and producing from certain shallow producing horizons. The suggestions ranged from case-by-case exemptions based on economic hardship to a broad exemption for all wells or any field sharing a common meter measuring 1000 MCF per day or less. Some comments suggested that wells qualifying for exemption should be exempt from the entire Order rather than selected standards. Other comments stated that standards B–1, 2, 4, and 7 were the ones most restrictive to low volume production, and with which it would be difficult or impossible to comply. It is recognized that some wells producing gas may not be able to support compliance with some of the minimum standards. Specific language exempting low volume production and the standards involved has been added in Part III.C. Low volume wells requiring artificial means to draw gas to the surface, and fields with a remaining production life of five years where production rates are declining, may also qualify for a variance from some standards on a case-by-case basis. BLM will, however, be working with lessees/operators to designate consolidated gas sales and allocation meters which may be required to meet all the standards even though individual well production may be 100 MCF per day or less.

Abatement Periods

The proposed rulemaking specifically requested comments as to whether a specific time period or firm deadline should be added to the abatement period "prior to sales or removal". One comment recommended that specific deadlines should not be set. Another comment stated that many of the abatement periods are entirely too short to provide adequate time to correct violations, and made specific recommendations for several standards recommending increases of 5 to 30 days for abatement. Specific deadlines were not added where the abatement period is "prior to sales or removal," but clarification of that phrase has been added to Section III.C.3. A number of abatement periods for specific violations were lengthened as recommended in the comments, where such extensions could be justified. Whenever the abatement period is prior to sales or removal, the potential for permanent loss of royalty exists and no oil or gas may pass the measurement point. It is assumed that any irregularities in calibration of the gas meter will be corrected during the calibration of the meter as prescribed in the Order. Accordingly, the abatement period in the appropriate section of the Order is stated as prior to completion of the calibration. Irregularities, (improper or inaccurate calibration of the gas meter) discovered after the calibration will be treated as a violation. An incidence of noncompliance will be issued stating the appropriate corrective action required and abatement period.

Purpose

One comment supported the stated intent to provide regulations pertaining to the rights of the operator to administrative and/or judicial review and appeal. The regulations pertaining to the rights to administrative review and hearing on the record, as well as the right to appeal, are contained in 43 CFR Subpart 3165, and language of assurance from that regulation has been added to the Order in this section, and a provision allowing extensions of abatement periods for any violation under certain conditions, as well.

Scope

One comment suggested that the description of the applicable lands subject to this Order, in addition to all Federal and Indian (except Osage) oil

and gas leases, be changed to the wording contained in 43 CFR Subpart 3161.1 Jurisdiction. The suggestion was adopted and the wording in Section I–C, Scope, was changed to correspond with Subpart 3161.1. Another comment stated that the scope is too broad, and that it was arbitrary for the Order to be applicable to State or privately-owned lands, when Federal and/or Indian leases are entitled to share the revenues, no matter how small, from non-jurisdictional wells. BLM will maintain the wording in 43 CFR 3161.1 as authorized by the Federal Oil and Gas Royalty Management Act of 1982.

Definitions

Numerous comments offered specific language for amending the proposed definitions or suggesting the addition of new ones.

The term "authorized representative" was removed to clarify the intent and "authorized officer" was added as recommended in several comments.

A definition for "business day" was added and the term "working day" was changed to "business day" throughout the Order.

One comment observed that most of the major violations listed will not result in a substantial adverse impact on royalty income. All of the violations identified as "major" in the proposed Order were re-examined to determine their effect on royalty income, and several were changed to minor violations. Violations designated as major involve improperly designed and/or installed equipment incapable of correct measurement, or other circumstances that directly and adversely affect Federal or Indian royalty calculations.

One comment requested clarification of the term "minor violation" because it could be construed to ripen ultimately into a major violation. This Order uses the definitions of major and minor violations used in the regulations. They are separate offenses with separate penalties. However, a minor violation remaining uncorrected for as little as a few hours could indeed attain the status of a major violation and the Incident of Noncompliance be reissued as major. The civil penalties for failure to comply with written orders to correct major and minor violations are contained in 43 CFR 3163.2(g)(2).

One comment suggested the addition of definitions for "operator" and "operating rights owner". These definitions were added in order to explain the distinction between the terms. One comment suggested that the definition of "Production Unit Measure" be changed from (Mcf) to (Mscf). This suggestion was not adopted. The definition of standard cubic foot should suffice with the change of 520°, Rankine to 519.67° Rankine, made in the interest of accuracy as recommended in several comments.

Several comments addressed the definition of "by-pass", offering varying language. All references to "by-pass" were removed from this Order. This term is adequately covered in Onshore Oil and Gas Order No. 3.

One comment observed that the definition of "Incident of Noncompliance" (INC) was not consistent with Onshore Oil and Gas Order No. 4 on Oil Measurement and suggested that it be changed. The definition was rewritten to maintain consistency between the measurement orders.

Several comments offered various changes to the definition of gas. These suggestions were not adopted, because the definition used is taken directly from the regulations. Several comments submitted additional terms they thought out to be defined, such as "custody transfer", "purchaser/transporter", "BTU content", "point of delivery", "allocation measurement", and "primary and secondary elements". The suggestions were reviewed and the terms found not sufficiently useful to be defined in this Order.

Requirements

Minimum standard no. 30 on recordkeeping was removed and relocated as an introductory paragraph III.A. notifying the public of this requirement, because recording and reporting are a procedural requirement of the Federal Oil and Gas Royalty Management Act rather than being an enforceable minimum standard. To accommodate this insertion, section III.A. General was changed to III.B. General. Also, the words "and allocation" were inserted in III.B.2. to clarify the intent of the Order.

Numerous comments asked questions as to the intent of the Order in general terms and as to how the Government would respond in certain situations, such as whether equipment failure would result in a violation citation for an operator. In response to such questions, section III.B. of the Order was greatly expanded to provide this information.

C. Gas Measurement by Orifice Meter

In response to many comments, the language in section III.C. was changed to exclude the requirement that metering stations in compliance with this Order be retrofitted, as a result of revisions to AGA Report No. 3. The term "prior to sales" was further defined, appropriate language for the exemption of certain low volume production was inserted, and a paragraph notifying the lessee/operator that the authorized officer may require consolidated metering stations was added.

Standards No. C.1 and C.2

Numerous comments addressed the requirements for maintaining beta ratios within the AGA prescribed range. Most comments were concerned with exemptions for low volume wells. Other comments stated that the standards were too lengthy and needed clarification. Both standards were condensed and amended to clarify the intent and to be consistent with AGA.

Standard No. C.3

One comment stated that the term "normal" when applied to flow conditions was nebulous and suggested that substituting "optimum" would make the meaning clearer. The suggestion was adopted. Several comments were received calling for clarification of the minimum length of pipe preceding and following an orifice and suggesting the insertion of the word "straight" as a better description of the length of (straight) pipe. The suggestion improves the meaning and was adopted. Two comments stated that the phrase "shut-in gas meter" in the corrective action was inappropriate and should be removed. The term has been removed from all the standards in this Order. One comment stated that a violation of this standard should not be classed as major. However, there is a potential for reductions in royalties collected that may not be recoupable, and the suggestion to change the violation to minor was not adopted.

Standard No. C.4

Two comments stated that low volume producers (100 to 200 MCF/D) should be exempted from this standard. It is agreed that production of 100 MCF/D measured on a monthly basis should be exempt from this standard as stated in the Order. Several comments argued that maintaining recordings in the middle one-third of the chart range was too restrictive. Some stated the outer two-thirds of the chart range was more acceptable, while others suggested that the middle one-third of the chart range be required where practical or possible. It is agreed that the middle one-third is too restrictive. In the final Order the range has been expanded to include the outer third of the chart range to accommodate improved chart recordings for various production rates.

Standard No. C.5

Numerous comments recommended that the standard be amended to require the static element to be sized so that it records in the 50 to 70 percent of the chart range. This is agreed to in part for the same reason discussed in the previous paragraph, and the standard is changed to read "outer two-thirds of the chart range".

Standard No. C.6

Several comments recommended the removal of the sentence, "Sample probes may be installed upstream of the straightening vanes," because it serves no purpose and is confusing. The sentence has been removed.

Standard No. C.7

Numerous comments included recommendations ranging from exemption of wells producing 500 MCF/D from the requirement of a continuous temperature recorder to the use of indicating thermometers only, especially where the flowing gas temperatures did not vary more than 5 to 10 °F. Following an intensive review, the standard has been removed and a new standard substituted exempting a broad class of sales and allocation meters measuring 200 MCF/D or less from the necessity of employing a continuous temperature recorder, and providing for possible issuance of a variance for sales and allocation meters measuring between 200 and 500 MCF/D. It is not intended to exempt any sales or allocation meters from temperature measurements of the flowing as which are required by AGA for computing volumes. The relaxation of the standard does allow for the use of indicating thermometers to measure the temperature within the limitation of the new standard. Even small temperature changes will result in significant variations in royalty revenues where large volumes of gas are measured and sold and in these cases strict adherence to the standard is required.

Standard No. C.8

Several comments were received, one of which offered rewording for and another suggested removal of the standard, arguing that the standard is restrictive and not in accordance with AGA Report No. 3. The intent of the standard is to require compliance with AGA standards and avoid any recess of the orifice plate as measured parallel to the axis of the meter tube. If the inside diameter of the meter tube pipe differs from the orifice fitting the difference in sizes shall be within AGA specified tolerances. One comment stated that meter tube inspections are time consuming and require shut-in, and recommended inspections at reasonable intervals not to exceed four years. It is agreed that the inspection is time consuming and requires shut-in, and that short intervals between inspections are not appropriate. Predetermined intervals are not intended to be set for meter tube inspections. The normal inspection for other minimum standards may reveal the need for inspection of the meter tube as well. However, the inspections will not be regularly scheduled. It is recognized that some orifice fittings and pipe connections are of different sizes, but in some cases have been machined or modified to consistent internal diameters. In these cases the operators should stamp notice of such modifications on the fitting where appropriate. An inspection may still be conducted to confirm the modification.

Standards No. C.9 and C.10

Several comments stated that the standards were more restrictive than the AGA requirements and suggested removal of the phrase "Shut-in gas meter and". Recommendations for the abatement period were to change to 60 days. This is agreed to in part and the provision rewritten to combine the 2 standards as number 9 and to refer to the recommended AGA requirements. Field experience has shown that shutting in the gas meter is not always necessary and could result in damage to the resource. The abatement period recommendation was not adopted because of a potential for nonrecoupable loss of royalty revenue.

Standard No. C.11

Numerous comments suggested different wording and clarification. After review, it was decided to remove the standard from this order, because it is adequately covered in Onshore Oil and Gas Order No. 3.

Standard No. C.12 (now no. 10)

All the comments on this standard addressed the frequency of inspection of the orifice plate. Two comments recommended changing the frequency of removal and inspection to every 6 months. This is agreed to in part and the standard has been changed to read "at least semiannually".

Standard No. C.13 (now no. 11)

Several comments addressed this provision. One recommended changing the abatement period to 24 hours while another recommended 30 days or prior to sales whichever occurs first. Two comments agreed with the requirement and abatement period. Two comments suggested minor changes to the corrective action. No changes were made to the standard or abatement period. Minor changes in wording were made to the corrective action, but did not change the intent. The violation remains major because of the potential for nonrecoupable loss of royalty revenue.

Standard No. C.14 (now no. 12)

A few comments addressed the standard, suggesting only minor rewording of the corrective action to include recording of the "as found" and "as left" readings. This recommendation has been adopted.

Standard No. C.15 (now no. 13)

Several comments were received and some agreed with the standard. One comment suggested changing the term "meter pen" to "meter differential pen" and one observed that the zero position of the recording devices should be checked every time data is collected from the recording device. The former suggestion has been adopted in part, to clarify the term "meter pen", and the words "the static and differential" inserted. The corrective action was also changed to require the recording of the "as found" and "as left" readings as suggested by a comment.

Standard No. C.16 (now no. 14)

One comment recommended that the corrective action be changed to include the "as found" and "as left" readings. This recommendation was adopted.

Standard No. C.17 (now no. 15)

Several comments were received addressing this standard. One comment recommended changes to the corrective action to include the word "calibration." The recommendation was not adopted. However, the corrective action was rewritten and clarified. Several comments asked for clarification of the standard regarding the number of points in the chart range where accuracy of the differential pen should be tested. One comment observed that the differential pen should be the most accurate within the recording range. The suggestion was adopted in part and the standard was rewritten to include tests for accuracy of the differential and static pens at only 3 points, one of which must be within the normal range of the differential recording.

Standard No. C.18 (now no. 16)

Two comments addressed this standard. One comment suggested that the corrective action and abatement period should be altered to include the words "after the as found calibration is

performed," while the other comment suggested clarification of the standard. The former suggestion was not adopted, but the standard was rewritten to clarify the intent and parts of the corrective action were merged into the standard.

Standard No. C.19 (now no. 17)

Numerous comments objected to the requirement that meters be tested monthly for the first 3 months following installation and repair. Most comments suggested that if initial calibration of the meter is found to be adequate, the meter testing frequency should then be semi-annual. This was agreed to in part and the requirement for the monthly tests following installation or repair has been removed. However, the suggestion that meters be calibrated on a semi-annual basis rather than quarterly as prescribed was not adopted. The corrective action was simplified to read "Test meter for accuracy." The abatement period of prior to sales was removed and a two-part abatement provision inserted to cover both abatement following installation and repairs and failure to calibrate the meter quarterly.

Standard No. C.20 (now no. 18)

Numerous comments objected to the requirement that the authorized officer be given at least 24 hours notice when meter calibrations are conducted. Several comments urged that the abatement period should be changed to prior to next calibration. The suggestions to remove or change the requirement were not adopted. The intent of this requirement is to permit the authorized officer to schedule visits to witness some of the meter calibrations. The calibration schedule may be submitted in advance for the current year if desired. It is recognized that schedules determined far in advance may not be followed exactly. However, a schedule from each operator will permit the BLM to arrange visits to witness calibrations and work with the operator regarding later changes to the planned schedule. The abatement period was changed as recommended.

Standard No. C.21 (now no. 19)

Several comments suggested that the abatement period should be lengthened for the submission of corrected volumes when meter inaccuracies exceed 2 percent. Recommendations were to delete the current "prior to completion of calibration" and change to a time period ranging from 10 to 120 days. One comment recommended a dual corrective action and abatement period that would apply to (a) situations where the meter was being calibrated, and (b) the submission of a corrected volume report. This suggestion was adopted. Also, in response to requests to allow a more reasonable time to submit a corrected volume report, the abatement period was changed to 60 days in the final rulemaking.

Standard No. C.22 (now no. 20)

Several comments were submitted regarding estimating volumes when measuring equipment is discovered to be out of service. Most of the comments were concerned with the abatement period and recommended a longer period ranging from 30 to 120 days. A longer abatement period is justified because the violation is minor and more time may be needed to obtain information from other parties: The period has been extended to 60 days in the final rulemaking. No changes were made in the standard and the corrective action received minor word changes.

Standard No. C.23 (now no. 21)

Several comments recommended the deletion of the reference to paragraph 6.3 of AGA Committee Report No. 3, stating that the reference would be too restrictive in computing volumes of gas. One comment suggested that volumes of gas delivered should be calculated in accordance with the flow equations specified in AGA Committee Report No. 3. This suggestion was adopted and the reference to paragraph 6.3 was removed. The abatement period was changed to 60 days because the violation is minor and 60 days may be necessary to obtain chart recordings from the purchaser and make recalculations.

Standard No. C.25 (now no. 23)

Several comments addressed the determination of the weighted average BTU content. Several stated that the term "weighted average" needs clarification and that BTU content is not appropriate for noncombustible gases. Other comments recommended the abatement period be changed to 30 days. After due consideration the decision was made to remove the term "weighted average" and the monthly reporting requirements, because it is more appropriate for the authorized officer to prescribe or approve the variables used in the BTU value determination on a case-by-case basis. The abatement period was changed to 30 days.

Standard No. C.26

After a review of the comments this requirement was removed as unnecessary and imposing too large a routine paperwork burden.

Standard No. C.27 (now no. 24)

Several comments objected to filing calibration reports with the authorized officer on a routine basis, preferring to file them only upon request. In addition, the abatement period was stated to be too short. The comment was adopted and the Order includes the requirement to submit the meter calibration reports to the authorized officer "upon request". Also, the abatement period was changed to 15 days to allow sufficient time for mailing the reports, considering that the calibration report may not be available to the operator as the oil meter proving report is available to the operator under Order No. 4.

Standard No. C.28 (now no. 25)

Several comments addressed the method for determining the atmospheric pressure at the metering station for purposes of measurement and meter calibration. Three comments recommended extending the abatement period to 30 days, and one recommended that the atmospheric pressure be established by actual measurement at the elevation of the measurement station. The recommendations have been adopted in the final rulemaking, because it was not the intent of the proposed Order to restrict the determination of the elevation of the measurement station, and because potential losses are recoupable by recalculation after determination of the elevation.

Standard No. C.29 (now no. 26)

Several comments suggested that the term "specific gravity" should be changed to "relative density". The 2 terms are related. Because of common usage, "specific gravity" can be used synonymously and is a useful term. The abatement period has been changed to 30 days as suggested, because laboratory analysis may be necessary to determine specific gravity.

Standard No. C.30

This standard was removed and made a notification at the beginning of Section III of the Order.

D. Gas Measurement by Other Methods or at Other Locations Acceptable to the Authorized Officer

Several comments stated that any method of measurement approved by the AGA should be acceptable to the BLM, and that other methods as listed should not be included without referring to the standards governing their use. 43 CFR 3162.7-3 specifically approves gas measurement by orifice meter or other methods that may be acceptable to the

authorized officer. Since the vast majority of metering stations employ an orifice for measurement, it has been determined that applications for the use of other methods of measurement should be accompanied by the specific standards for the method proposed on a case-by-case basis rather than make the Order more lengthy and complex. The suggestion to add the words "participating area" wherever units are involved, and the recommendation of one comment to add "positive displacement meter" to the list of other measurements, were adopted.

1. Measurement on the Lease, Unit, Unit Participating Area, or Communitized Area

Two comments were submitted. One comment stated that, because both working interest gas and royalty gas are involved, the classification of a major violation for unapproved alternate gas measurement methods was too severe. This comment was not agreed to because it has been determined that there is a possible potential for nonrecoupable loss of royalty gas. Another comment recommended rewording of the conditions of approval wherein the alternate method could be approved if it did not adversely affect royalty income. The recommendation was adopted.

2. Measurement at a Location Off the Lease, Unit, Unit Participating Area, or Communitized Area

A number of comments were received on this provision. To clarify the intent of this requirement, the BLM will continue to require prior approval for off-lease measurement and emphasize that the application is required to be complete and to justify the need and type of measurement method to be used. The violation is classed as major because there is the potential for adverse effects on royalty income. The phase-in time period is sufficient to obtain needed approvals.

IV. Variances from Minimum Standards

Two comments recommended that both oral requests and approvals be allowed so long as the oral request is followed by a written request not later than the fifth business day following oral approval. This recommendation is reasonable and has been adopted. In addition, the standard was expanded to include language allowing the authorized officer to issue a Notice to Lessees (NTL) and establish modified standards or variances for specific geographic areas of operation. A provision for the authorized officer to protect royalty income and provide for proper product verification by requiring additional standards was also included. While situations requiring additional standards should be infrequent, it should be remembered that the Order consists of minimum standards rather than optimum standards applicable to every situation on a nationwide basis. When additional standards are required, the operator/lessee will be notified in writing. All additional requirements will be reasonable and the rationale for imposing the standards will be fully explained.

The principal authors of this final rulemaking are Richard T. Hunter, Lakewood, Colorado; Terry Messerli, Billings, Montana; and Upendra Parikh, Jackson, Mississippi, of the Bureau of Land Management Orders Committee responsible for the development and issuance of this Order, assisted by the Orders Task Group, the staff of the Division of Legislation and Regulatory Management, Bureau of Land Management, the Office of the Solicitor, Department of the Interior, and Jim Fisher, retired from the Bureau of Land Management. Scott Ellis, Minerals Management Service, was also a part of the Orders Committee and assisted on royalty accounting issues.

It is hereby determined that this final rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The final Order will have minimal adverse economic effects, because its requirements reflect the operating practices currently followed by prudent operators when gas production is measured in accordance with the standards and specifications published by the American Gas Association (AGA), officially designated as American National Standard ANSI/API 2530, 1985, and AGA Committee Report No. 3, second edition. The final Order may provide a beneficial economic effect. Industry is less likely to be subjected to assessments or penalties resulting from violations and/or the requirement to undertake costly remedial actions, if it has a better understanding of the requirements of the Bureau of Land Management that relate to the measurement of gas production. The State Governments that share in the royalties collected and Indian mineral owners will also benefit from assurance of more accurate gas measurement. The minimum standards established by this Order essentially are those that have been required but not officially promulgated by this Department and impose the same burden on all lessees and operators, regardless of the size of the entity, on lands where the measurement of gas production is under the jurisdiction of the Bureau of Land Management. Therefore, the Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

The information collection requirements contained in the Order have been approved by the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*, and assigned clearance numbers 1004–0134, 1004–0135, and 1004–0136.

List of Subjects in 43 CFR Part 3160

Government contracts, Indian lands—mineral resources, Mineral royalties, Oil and gas exploration, Oil and gas production, Public lands—mineral resources, Reporting requirements.

Under the authorities cited below, Part 3160, Group 3100, Subchapter C, Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below:

James E. Cason,

Acting Assistant Secretary of the Interior.

January 3, 1989.

PART 3160—[AMENDED]

1. The authority citation for Part 3160 continues to read:

Authority: The Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 *et seq.*), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359), the Act of May 31, 1930 (30 U.S.C. 301–306), the Act of March 3, 1909, as amended (25 U.S.C. 396), the Act of May 11, 1938, as amended (25 U.S.C. 396a–396q), the Act of February 28, 1891, as amended (25 U.S.C. 397), the Act of May 29, 1924 (25 U.S.C. 398), the Act of March 3, 1927 (25 U.S.C. 398a–398e), the Act of June 30, 1919, as amended (25 U.S.C. 399), R.S. 441 (43 U.S.C. 1457), See also Attorney General's Opinion of April 2, 1941 (40 Op. Atty. Gen. 41), the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 471 *et seq.*), the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), the Act of December 12, 1980 (42 U.S.C. 6508), the Combined Hydrocarbon Leasing Act of 1981 (Pub. L. 97–78), the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 *et seq.*) and the Indian Mineral Development Act of 1982 (25 U.S.C. 2102 *et seq.*).

2. Section 3164.1(b) is amended by adding the following entry to the table:

2619

The proposed rule contains a detailed summary of EPA's review of the petition to delete Na_2SO_4 as well as additional information on the petition process under section 313 of Title III of SARA.

As of April 26, 1989, EPA had received 32 comments on the proposed rule to delete Na_2SO_4. Thirty-one comments favoring the proposed deletion were received from industry, industry associations, and a Federal agency (the United States Departments of the Interior, Bureau of Mines). One comment opposing the deletion was received from the Miami Group of the Ohio Chapter of the Sierra Club.

The commenter contended that Na_2SO_4 is capable of harming or killing fish and wildlife but did not provide any evidence to support this statement. As discussed above, EPA conducted a petition review which included a toxicity evaluation of Na_2SO_4 and concluded that existing evidence does not demonstrate that Na_2SO_4 causes or can reasonably be anticipated to cause significant adverse health or environmental effects, including harm to fish and wildlife, as set forth in the listing criteria found in section 313(d). Details of this review can be found in the proposed rule.

The commenter also mentioned the large volume of Na_2SO_4 discharged, particularly to public sewer systems, and expressed a concern that these discharges could combine with other substances in the sewer system to create "an even greater threat" to the environment and the sewage treatment process. EPA's review of Na_2SO_4 included an assessment of the environmental fate of Na_2SO_4 following discharge to sewage treatment systems as well as directly to surface waters. Again, EPA found no evidence of significant toxicity of Na_2SO_4 and does not feel the chemical represents a significant threat to the environment or the sewage treatment process. The commenter did not provide any evidence or references to contradict this finding. EPA also notes that, in the absence of significant toxicity concerns, volume alone is not sufficient reason to list a chemical under section 313.

Finally, the commenter stated that communities should be able to track all toxic chemicals released into their environment, in order to allow the communities to make risk determinations themselves. EPA does not disagree with this comment. However, EPA reiterates that no evidence was found to demonstrate toxicity of Na_2SO_4 sufficient to meet the listing criteria under section 313.

Based upon an evaluation of the petition, available toxicity and exposure information, and the comments, EPA affirms its determination that Na_2SO_4 does not meet any of the listing criteria contained in section 313(d). Therefore, EPA is deleting Na_2SO_4 from the list of chemicals subject to reporting under section 313 of Title III of SARA. As a result of this action, facilities will not be required to report releases of Na_2SO_4 that occurred during the 1988 calendar year, and releases that will occur in the future.

II. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore, requires a Regulatory Impact Analysis. EPA has determined that this rule is not a "major rule" because it will not have an effect on the economy of $100 million or more. This rule will decrease the impact of the section 313 reporting requirements on covered facilities and will result in cost-savings to industry, EPA, and States.

This rule was submitted to the Office of Management and Budget (OMB) under Executive Order 12291.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act of 1980, EPA must conduct a small business analysis to determine whether a substantial number of small entities will be significantly affected. Because the rule will result in cost savings to facilities, EPA certifies that small entities will not be significantly affected by this rule.

C. Paperwork Reduction Act

This rule relieves facilities from having to collect information on the use and releases of Na_2SO_4. Therefore, there were no information collection requirements for OMB to review under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

List of Subjects in 40 CFR Part 372

Community right-to-know, Environmental protection, Reporting and recordkeeping requirements, Toxic chemicals.

Dated: June 9, 1989.

Victor J. Kimm,

Acting Assistant Administrator, Office of Pesticides and Toxic Substances.

Therefore, 40 CFR Part 372 is amended as follows:

PART 372—[AMENDED]

1. The authority citation for Part 372 continues to read as follows:

Authority: 42 U.S.C. 11013 and 11028.

§ 372.65 [Amended]

2. Section 372.65(a) and (b) are amended by removing the entire entry for sodium sulfate (solution) under paragraph (a) and removing the entire CAS No. entry for 7757–82–6 under paragraph (b).

[FR Doc. 89–14581 Filed 6–15–89; 4:57 pm]

BILLING CODE 6560–50–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

RIN 1004–AB46

43 CFR Parts 2800, 2810, 2880, 9230, and 9260

[AA–320–09–4211–02–NCPJ; Circular No. 2619]

Rights-of-way, Trespass, and Law Enforcement—Criminal; Amendment To Provide Procedures for Action on Unauthorized Use, Occupancy, or Development of Public Lands for Transportation etc.

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking provides procedures for addressing the unauthorized use, occupancy, or development of the public lands for uses and facilities that require authorization pursuant to Title V of the Federal Land Policy and Management Act (43 U.S.C. 1761–1771), the Act of August 28, 1937 (43 U.S.C. 1181a and 1181b), or section 28 of the Mineral Leasing Act (30 U.S.C. 185). These procedures will enhance protection for public lands and resources from unauthorized use and assure a proper monetary return for use, occupancy, or development of the public lands and resources as well as provide a penalty for violation.

EFFECTIVE DATE: July 20, 1989.

ADDRESS: Inquiries or suggestions should be sent to: Director (320), Bureau of Land Management, U.S. Department of the Interior, 1800 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Oscar Anderson, (202) 343–5441.

SUPPLEMENTARY INFORMATION: This rulemaking, which would provide procedures for addressing unauthorized use, occupancy, and development of the public lands for uses and facilities that require authorization pursuant to Title V of the Federal Land Policy and Management Act (43 U.S.C. 1761–1771), the Act of August 28, 1937 (43 U.S.C. 1181a and 1181b), or Section 28 of the

Mineral Leasing Act (30 U.S.C. 185), was published as a proposed rulemaking in the Federal Register on September 26, 1988 (53 FR 37319), with a 60-day comment period. A notice of correction was published in the Federal Register on October 6, 1988 (53 FR 39403). During the comment period, nine comments were received, six from Federal agencies, one from an association of county governments, one from an individual and one from a public utility.

Part 2800—Definitions

Two comments suggested that the definition of trespass, as provided in the proposed rulemaking at 43 CFR 2800.0–5(u), be expanded to address uses allowed by prior statute. These suggestions are consistent with the Bureau's intent to safeguard uses allowed by prior statute, and the final rulemaking adopts the suggestions by expanding § 2800.0–5(u) to include uses allowed by prior statute.

One comment suggested that unnecessary and undue degradation be considered a trespass even when associated with a Revised Statute (RS) 2477 right-of-way or grant of easement to mining and settlement claims. The proposed definition provided in 43 CFR 2800.0–5(u) classifies all unnecessary and undue degradation as a trespass without excluding trespasses associated with an RS 2477 right-of-way or grant of easement to mining and settlement claims. The final rule is, therefore, unchanged.

One comment suggested that the proposed definition for "willful trespass" as defined in the proposed rulemaking and "knowing and willful" as defined in 43 CFR 2920 be consistent. Since it is our intent that these terms and their definitions be synonymous, the definition in 43 CFR 2920 will be revised when those regulations are amended.

One comment suggested that trespass should not be considered "willful" where it is "virtually impossible for a person to identify or locate the public lands." The Bureau believes such a situation would qualify as a trespass committed by "mistake or inadvertence," which is criteria for nonwillful trespass as proposed and therefore, the final rule is unchanged.

One comment recommend that a definition of "current use fee, amortization fee, and maintenance fee" be included in final rulemaking. The Bureau recognizes the value in this suggestion and therefore, a definition has been added in the final rule as 2800.0–5(z).

Unauthorized Use, Occupancy or Development

One comment requested clarification as to whether penalties for unauthorized use, occupancy or development outlined in § 2801.3(c) are to be applied in addition to the actions identified in § 2801.3(b). The penalties are to be applied in addition to the actions identified in § 2801.3(b). 43 CFR 2801.3(b) lists the liabilities of anyone determined by the authorized officer to have trespassed as provided in § 2801.3(a). 43 CFR 2801.3(c) lists the penalties an authorized officer shall apply depending on whether the trespass is determined to be either willful, repeated nonwillful, or not resolved within 30 days after receipt of a written demand.

One comment suggested that 43 CFR 2801.3 (unauthorized use, occupancy or development) as proposed failed to recognize types of right-of-way trespass other than road use. Reference to other kinds of trespass, i.e., for uses requiring authorization pursuant to the regulations in 43 CFR 2800 and 2880, include all types of uses requiring rights-of-way or permits under Title V of the Federal Land Policy and Management Act and the Mineral Leasing Act, as amended. Therefore, the final rule is not changed as suggested.

One comment requested that the starting point of the 30-day period in § 2801.3(c)(1) be identified. The proposed rulemaking identifies the beginning of the 30 day period to be the date of receipt of a written demand. The Bureau recognizes the inherent ambiguity in the term "receipt of a written demand". Therefore, a definition of "written demand" is added as paragraph (y) under § 2800.0–5 and means a written demand in the form of a billing notice for payment of trespass liability which in no case will be less than the minimum amount as identified in § 2801.3(d) and will be delivered by certified mail, return receipt requested, or personally served.

Three comments suggested that the time period for which trespass damages are computed in the proposed rulemaking is inconsistent with 43 CFR 2920.1–2(b). Since the Bureau of Land Management is required by the FLPMA to receive fair market value for the use of the public lands and their resources for the period of use, the 6 year period is not included in the rulemaking.

Two comments recommended increasing the grace period (allowed for nonwillful trespass before assessing penalties) to 45 or 60 days after receipt of a written demand in order to provide adequate time for reaching an amicable settlement. One comment recommended deleting the requirement that penalties for a nonwillful trespass be assessed if the trespass is not resolved within the 30 day period. A definition of "written demand" has been added as § 2800.0–5(y) which will clarify at what time the 30 day period begins. The written demand is the culmination of fact finding meetings and investigation by field officials. The written demand is issued after the trespasser and the authorized officer have finished resolution meetings and the authorized officer has determined the amount of liability due the United States based upon information provided by the trespasser and facts provided from the trespass investigation. The trespasser has 30 days to pay the damages due as identified in the written demand; a penalty is applied if payment is not received within those 30 days. This penalty is provided to insure a timely final resolution to the trespass. Penalty is avoided when one of the three conditions in § 9239.7–1 of this title have been satisfied. Provisions are also allowed in item (c) of 43 CFR 9239.7–1 for the authorized officer to "determine in writing" that a legitimate dispute exists. The authorized officer therefore has the authority at any time prior to issuance of the written demand for payment to adjust liabilities and any time during the 30 day period to acknowledge a legitimate dispute to prevent the penalty assessment. Doubling the rental value as penalty for an excessive delay in resolution is also provided in 43 CFR 2920. Therefore, these comments were not adopted in the final rulemaking.

One comment stated that the proposed rulemaking did not provide for a timeframe to resolve repeated nonwillful or willful trespass. The "30 day" timeframe in the proposed rulemaking at § 2801.3(c)(1) is the measure of time after which penalties for nonwillful trespass are to be addressed for failure to satisfy liabilities by meeting one of the conditions in § 9239.7–1, not the time allowed to resolve a trespass. No specific time period is identified for total trespass investigation and resolution. A clarification is included in § 2801.3(c)(1) and 2800.0–5(y) of the final rulemaking.

One comment suggested allowing the discretionary increase of penalties by 3 to 5 times the rental or road use, amortization and maintenance charges when trespass is repeated. The proposed rulemaking provides for penalties on repeated trespass which we believe are adequate. The suggestion to provide discretionary authority to

increase the penalty for repeated trespass to 5 times the rental value is considered harsh, is inconsistent with existing 43 CFR 2920 regulations, and, therefore, is not adopted.

One comment suggested that the phrase "inception of trespass" in subparagraphs 2801.3(c)(1) and (2) could be interpreted to mean either the date the trespass began or the date a trespass was discovered and a case established. The Bureau believes that the term "inception of trespass" generally is understood to mean the date on which a trespass began (as can be proven by methods normally used in establishing a period in time, such as by photos, witnesses, evidence, admission, etc.). Therefore, the final rule is unchanged.

One comment suggested that the reimbursement of costs incurred by the United States in investigation and termination of a trespass be recovered by utilizing the fee schedule found in 43 CFR 2808.3 and 3608.4 to determine liability for administrative costs. As no trespass cases have been completed by which an average of administrative costs can be determined, the suggested average fee schedule cannot be used at this time. Actual costs determined by accurate record keeping will be needed until a determination can be made as to whether an average fee schedule is proper. Therefore, this suggestion is not adopted in the final rulemaking.

One comment suggested that the requirement of a minimum settlement fee as required in § 2801.3(e) of the proposed rulemaking would hinder resolving trespass and may cost more to collect than an amount which otherwise could be collected. The State Director presently has the authority, with concurrence of the Field Solicitor, to compromise or write off trespass liability up to $20,000 and to suspend collection action (write off) uncollectable trespass liability claims of up to $600. The FLPMA requires receipt of fair market value for use of public lands and resources unless otherwise provided for by statute such as in the Federal Claims Collection Standards. Collection of administrative costs has been upheld, see *Henry Deaton* (101 IBLA 177), and also is provided for in 43 CFR 2920 and 43 CFR 4150. Based upon studies conducted for right-of-way applications, processing a case costs, at a minimum, the amount identified for a Category I (all information contained in the office and no field trips involved) right-of-way application. In light of minimum right-of-way case processing costs and the State Director's authority to compromise or write off debts up to $20,000 for good cause, the concerns of this suggestion are met by existing mechanisms. The suggestion to eliminate the minimum fee requirement in the final rulemaking is not adopted.

One comment suggested that the term "other lands use request" as used in § 2801.3(e) be clarified. The authorities for the final rulemaking may be found at 43 U.S.C. 1181a, 1181b, 1733, 1740, 1761–1771 and 30 U.S.C. 185. These authorities include rights-of-way and permits under Title V of FLPMA, the Mineral Leasing Act, and Tram Roads on the Revested Oregon and California Railroad and Reconveyed Coos Bay Wagon Road Grant Lands (O&C). Lands actions which may be authorized by other authorities are not included in this final rulemaking, and no further explanation is required.

One comment suggested changing the wording in 43 CFR 2801.3(g) and 43 CFR 9262.1 to "knowing and willful trespassers shall be tried" before a United States Magistrate rather than "may be tried." The wording "may be tried" is consistent with wording in the Federal Land Policy and Management Act (43 U.S.C. 1733). Therefore, this suggestion is not adopted in the final rulemaking.

One comment suggested that public utilities providing service to parties accused of trespass be allowed to remain in service until the party receiving the services is legally judged to be in trespass. In the instance described, both the public utility and the party being served would be in trespass, i.e., the utility company is in trespass for service lines and the party served by the utility company is in trespass for the utilities to which the utility lines run. The utility and the party being served are legally judged to be in trespass only after the appeal period for a notice of trespass has expired without appeal, decision on appeal has been made, or the trespasser judged to be in trespass in court proceedings. The utility may file a use permit or right-of-way application requesting authorization to continue service pending the outcome of all appeals to satisfy any concern. Therefore, the suggested change is not adopted as no removal is required until a use, occupancy or development is considered a trespass in accordance with existing law.

One comment suggested that an authorized officer be able to resolve an unauthorized use, occupancy, or development through an amicable settlement, by giving the trespasser a grant for his unauthorized use and not require a formal trespass procedure. As stated previously, provisions are available which allow the State Director to compromise or write off debts of up to $20,000. This allows the flexibility suggested where cause exists. Also, without formal notice, a trespasser is not legally notified of his liability. Therefore, this suggestion is not adopted in the final rulemaking.

One comment suggested that a trespasser not be allowed to file a bond, conditioned upon payment of the damages due, as provided in § 9239.7–1 item (b) in order to be eligible for a new permit, license, authorization or grant. The rulemaking should allow new authorizations to any trespasser who has filed a bond to compensate the United States for outstanding trespass liabilities. The allowance provides for issuance of new authorizations pending payment of outstanding liabilities yet assures that the United States will recover just compensation. This provision will allow timely completion of multiple applications in progress. Additional penalties for willful trespass are provided in § 9262.1. Therefore, this suggestion is not included in the final rulemaking.

One comment suggested clarification of § 9239.7–1 (rights-of-way trespass on public lands) for the types of uses which shall not be allowed to a party with an unresolved trespass. Existing rules provide that no new right-of-way or permit under 43 CFR Parts 2800, 2810 or 2880 may be issued to a trespasser until one of the conditions identified in Section 9239.7–1 is met. Therefore, the final rulemaking is unchanged.

One comment suggested that the rule should be revised to delete from § 9239.7–1 the words "and received by the applicant." In most cases, it is difficult to determine when a letter has been received by the addressee. It is not unusual for weeks to pass before proof of delivery has been received by the Bureau. Therefore, the final rule is changed to state that the grant takes effect on the date of the authorized officer's signature.

Part 9260—Law Enforcement—Criminal

One comment asked whether a trial before a United States Magistrate as specified in 43 CFR Part 9262–1 and provision for fine and/or imprisonment are pursued in addition to rent and other charges imposed under § 2801.3. Criminal penalties are applied in addition to civil penalties, where the trespasser is convicted in a criminal prosecution. Such prosecution may be brought independently of civil damage recovery proceedings.

The principal author of this final rulemaking is Oscar Anderson, Division of Lands and Realty, Bureau of Land

Management, assisted by the Division of Legislation and Regulatory Management, Bureau of Land Management.

It is hereby determined that this final rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

The changes made by this final rulemaking will not have an effect upon the legitimate users of the public lands and resources. The changes made by the final rulemaking will provide procedures for processing cases involving instances of illegal use of the public lands for rights-of-way and road use purposes, for recovering fair market value of the use of public lands and resources for right-of-way and road use purposes, for providing penalties for repeated and willful illegal use, for recovering adminstrative costs for processing these cases, and for rehabilitation costs of public lands and resources damaged through illegal use. The impact of the final rulemaking will be the same, regardless of the size of the entity involved in an illegal use.

The rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 et seq.

For the reasons set out above, 43 CFR Parts 2800, 2810, 2880, 9230, 9260 are amended as set forth below:

James M. Hughes,

Deputy Assistant Secretary of the Interior.

May 25, 1989.

PART 2800—RIGHTS-OF-WAY, PRINCIPLES AND PROCEDURES

1. The authority citation for Part 2800 is revised to read:

Authority: 43 U.S.C. 1733, 1740, and 1761–1771.

2. Section 2800.0–3 is revised to read:

§ 2800.0–3 Authority.

Sections 303, 310, and 501–511 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733, 1761–1771) authorize the Secretary of the Interior to issue regulations providing for the use, occupancy, and development of the public lands through permits, easements, and rights-of-way.

3. Section 2800.0–5 is amended by adding the definition of "trespass" as subparagraph (u), "willful trespass" as subparagraph (v), "nonwillful trespass" as subparagraph (w), and "unnecessary or undue degradation" as subparagraph (x), "written demand" as (y) and "road use, amortization and maintenance" as (z).

§ 2800.0–5 Definitions.

* * * * *

(u) "Trespass" means any use, occupancy or development of the public lands or their resources without authorization to do so from the United States where authorization is required, or which exceeds such authorization or which causes unnecessary or undue degradation of the land or resources.

(v) "Willful trespass" means the voluntary or conscious trespass as defined at § 2801 of this title. The term does not include an act made by mistake or inadvertence. The term includes actions taken with criminal or malicious intent. A consistent pattern of trespass may be sufficient to establish the knowing or willful nature of the conduct, where such consistent pattern is neither the result of mistake or inadvertence. Conduct which is otherwise regarded as being knowing or willful does not become innocent through the belief that the conduct is reasonable or legal.

(w) "Nonwillful trespass" means a trespass, as defined at § 2801.3(a) of this title, committed by mistake or inadvertence.

(x) "Unnecessary or undue degradation" means surface disturbance greater than that which would normally result when the same or a similar activity is being accomplished by a prudent person in a usual, customary, and proficient manner that takes into consideration the effects of the activity on other resources and land uses, including those resources and uses outside the area of activity. This disturbance may be either nonwillful or willful as described in § 2800.0–5(v) through (w), depending upon the "circumstances",

(y) "written demand" means a request in writing for payment and/or rehabilitation in the form of a billing delivered by certified mail, return receipt requested or personally served.

(z) "road use, amortization and maintenance charges" means the fees charged for commercial use of a road owned or controlled by the Bureau of Land Management. These fees normally include use fees, amortization fees and maintenance fees.

4. Section 2801.3 is revised to read:

§ 2801.3 Unauthorized use, occupancy, or development.

(a) Any use, occupancy, or development of the public lands that requires a right-of-way, temporary use permit, or other authorization pursuant to the regulations of that part and that has not been so authorized, or that is beyond the scope and specific limitations of such an authorization, or that causes unnecessary or undue degradation, is prohibited and shall constitute a trespass as defined in Section 2800.0–5.

(b) Anyone determined by the authorized officer to be in violation of paragraph (a) of this section shall be notified in writing of such trespass and shall be liable to the United States for:

(1) Reimbursement of all costs incurred by the United States in the investigation and termination of such trespass;

(2) The rental value of the lands, as provided for in § 2803.1–2 of this title, for the current year and past years of trespass, or where applicable, the cumulative value of the current use fee, amortization fee, and maintenance fee as determined by the authorized officer for unauthorized use of any road administered by the BLM; and

(3) Rehabilitating and stabilizing any lands that were harmed by such trespass. If the trespasser does not rehabilitate and stabilize the lands within the time set by the authorized officer in the notice, he/she shall be liable for the costs incurred by the United States in rehabilitating and stabilizing such lands.

(c) In addition to amounts due under the provisions of paragraph (b) of this section, the following penalties shall be assessed by the authorized officer:

(1) For all nonwillful trespass which is not resolved by meeting one of the conditions identified in § 9239.7–1 within 30 days of receipt of a written demand under paragraph (b) of this section—an amount equal to the rental value and for roads, an amount equal to the charges for road use, amortization and maintenance which have accrued since the inception of the trespass;

(2) For repeated nonwillful or willful trespass—an amount that is 2 times the rental value and for roads, an amount 2 times the charges for road use, amortization and maintenance which have accrued since the inception of the trespass.

(d) In no event shall settlement for trespass computed pursuant to paragraphs (b) and (c) of this section be less than the processing fee for a Category I application for provided for in § 2808.3–1 of this title for nonwillful

trespass or less than 3 times this value for repeated nonwillful or knowing and willfull trespass. In all cases the trespasser shall pay whichever is the higher of the computed penalty or minimum penalty amount.

(e) Failure to satisfy the requirements of § 2801.3(b) of this title shall result in the denial of any right-of-way, temporary land use, road use application or other lands use request filed by not yet granted until there has been compliance with the provisions of § 9239.7–1 of this title.

(f) Any person adversely affected by a decision of the authorized officer issued under this section may appeal that decision under the provisions of Part 4 of this title.

(g) In addition to the civil penalties provided for in this part, any person who knowingly and willfully violates the provisions of § 2801.3(a) of this title may be tried before a United States magistrate and fined no more than $1,000 or imprisoned for no more than 12 months, or both, as provided by section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a)) and § 9262.1 of this title.

PART 2810—TRAMROADS AND LOGGING ROADS

1. The authority citation for Part 2810 is revised to read:

Authority: 43 U.S.C. 1181a, 1181b, 1732, 1733, and 1740.

2. Section 2812.0–3 is revised to read:

§ 2812.0–3 Authority.

Sections 303 and 310 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1732, 1733, and 1740), and the Act of August 28, 1937 (43 U.S.C. 1181a and 1181b), provide for the conservation and management of the Oregon and California Railroad lands and the Coos Bay Wagon Road lands and authorize the Secretary of the Interior to issue regulations providing for the use, occupancy, and development of the public lands through permits and rights-of-way.

3. Section 2812.1–3 is revised to read:

§ 2812.1–3 Unauthorized use, occupancy, or development.

Any use, occupancy, or development of the Revested Oregon and California Railroad and Reconveyed Coos Bay Wagon Road Grant Lands (O & C) lands (as is defined in 43 CFR 2812.0–5(e)), for tramroads without an authorization pursuant to this subpart, or which is beyond the scope and specific limitations of such an authorization, or that cause unnecessary or undue degradation, is prohibited and shall constitute a trespass as defined in § 2800.0–5. Anyone determined by the authorized officer to be in violation of this section shall be notified of such trespass in writing and shall be liable to the United States for all costs and payments determined in the same manner as set forth at § 2801.3, Part 2800 of this title.

PART 2880—RIGHTS-OF-WAY UNDER THE MINERALS LEASING ACT

1. The authority citation for Part 2880 is revised as follows:

Authority: 30 U.S.C. 185, Section 28, unless otherwise noted.

2. Section 2881.3 is revised to read:

§ 2881.3 Unauthorized use, occupancy or development.

Any use, occupancy, or development of the public lands that requires a right-of-way, temporary use permit, or other authorization pursuant to the regulations in this part, and that has not been so authorized, or that is beyond the scope and specific limitations of such authorization, or that causes unnecessary or undue degradation, is prohibited and shall constitute a trespass as defined in § 2800.0–5. Anyone determined by the authorized officer to be in trespass on the public lands shall be notified in writing of such trespass and shall be liable to the United States for all costs and payments determined in the same manner as set forth at § 2801.3, Part 2800 of this title.

PART 9230—TRESPASS

1. The authority citation for Part 9230 is revised to read:

Authority: 43 U.S.C. 1732, 1733, 1740, and 1761–1771.

2. Section 9239.7–1 is revised to read:

§ 9239.7–1 Public lands.

The filing of an application under Part 2800, 2810, or 2880, of this chaper does not authorize the applicant to use or occupy the public lands for right-of-way purposes, except as provided at §§ 2800.0–5(m), 2802.1(d) and 2882.1, until written authorization has been issued by the authorized officer. Any unauthorized occupancy or use of public lands or improvements for right-of-way purposes constitutes a trespass against the United States for which the trespasser is liable for costs, damages, and penalties as provided in §§ 2801.3, 2812.1–3, and 2881.3, of this title. No new permit, license, authorization or grant of any kind shall be issued to a trespasser until:

(a) The trespass claim is fully satisfied; or

(b) The trespasser files a bond conditioned upon payment of the amount of damages determined to be due the United States; or

(c) The authorized officer determines in writing that there is a legitimate dispute as to the fact of the trespasser's liability or as to the extent of his liability and the trespasser files a bond in an amount determined by the authorized officer to be sufficient to cover payment of a future court judgment in favor of the United States.

PART 9260—LAW ENFORCEMENT—CRIMINAL

The authority citation for Part 9260 is revised to read:

Authority: 16 U.S.C. 433; 16 U.S.C. 4601–6a; 16 U.S.C. 670j; 16 U.S.C. 1246(i); 16 U.S.C. 1338; 18 U.S.C. 1851–1861; 43 U.S.C. 315(a); 43 U.S.C. 1061, 1063; 43 U.S.C. 1733.

2. Subpart 9262 is revised to read:

§ 9262.0 Authority.

43 U.S.C. 1732, 1733, 1740, 1761–1771.

§ 9262.1 Penalties for unauthorized use, occupancy, or development of public lands.

Under section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a)) any person who knowingly and willfully violates the provisions of §§ 2801.3(a), 2812.1–3, 2881.3, or 2920.1–2(a) of this title, by using public lands without the requisite authorization, may be tried before a United States magistrate and fined no more than $1,000 or imprisoned for no more than 12 months, or both.

[FR Doc. 89–14561 Filed 6–19–89; 8:45 am]
BILLING CODE 4310–84–M

---

43 CFR Public Land Order 6730

[CO–930–09–4214–10; C–45714]

Withdrawal of National Forest System Land for Protection of Recreational Values; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws approximately 374 acres of National Forest System lands from mining for a period of 50 years for the protection of existing and planned recreational facilities near Aspen, Colorado. The lands have been and remain open to such other forms of disposition as may by law be made of National Forest System Lands and to mineral leasing.

EFFECTIVE DATE: June 20, 1989.

2620

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

1004-AB61

[AA-220-08-4320-02; Circular No. 2620]

43 CFR Part 4100

Grazing Administration Exclusive of Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking amends a section of regulations for the management of domestic livestock grazing on the public lands administered by the Bureau of Land Management. The revising regulation was issued by the Department of the Interior as a proposed rulemaking and published in the Federal Register on December 8, 1988 (53 FR 49565) with a public comment period of 60 days ending on February 8, 1989. Nine comments were received and considered during the development of the final rulemaking. This final rulemaking revises § 4110.4-2(a) to allow the authorized officer to determine on a case-by-case basis whether to cancel or suspend a grazing preference in whole or in part, or, where resource conditions warrant, to permit livestock grazing preferences to continue unchanged despite a reduction in the acreage available for livestock grazing.

EFFECTIVE DATE: August 28, 1989.

ADDRESS: Inquiries or suggestions should be sent to: Director (140), Bureau of Land Management, Room 5555-MIB, 1800 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Billy R. Templeton, (202) 653-9193.

SUPPLEMENTARY INFORMATION: This final rulemaking provides the authorized officer the flexibility to make determinations on a case-by-case basis to maintain, cancel or suspend a grazing preference where there is a reduction in the acreage available for livestock grazing.

The existing regulations at § 4110.4-2(a) require that where there is a decrease in public land acreage available for livestock grazing use within an allotment, grazing permits or leases and grazing preferences must be canceled in whole or in part. However, in certain circumstances, the public land acreage lost to livestock grazing may be very small and the remaining acreage in the allotment may produce sufficient forage for livestock to support the grazing preference. In other situations, the land may be committed to a mining operation and later again be available for livestock grazing when the mining operation is completed and the land rehabilitated.

For these reasons, and in recognition of range administrative purposes, the existing regulations are revised to deal more logically with the livestock grazing permittees and lessees. Rather than be required to modify or cancel a grazing lease/permit or preference, the authorized officer shall have the authority to make a determination that takes into account the level of available forage for livestock and the magnitude of the change in public land acreage.

The proposed rulemaking was published in the Federal Register on December 8, 1988 (53 FR 49565) with a 60 day public comment period ending on February 8, 1989. During the 60 day comment period, 9 comments were received: 5 from associations; 2 from state governments; and 2 from a Federal agency.

Most of the public comments supported the proposed regulations, citing flexibility in decision making to reflect site specific conditions as a positive revision of the rules. Commenters opposing the proposed regulations expressed a spectrum of views concerning the agency's intent ranging from the proposed rules being another effort to eliminate livestock grazing on public lands to the proposed rulemaking having an objective of keeping grazing preferences at maximum levels.

By this final rulemaking the field level manager is given the latitude and flexibility to make sound land use decisions based on existing resource conditions and not be restricted by regulations which mandate cancellation of a grazing permit or lease, in whole or in part, when an allotment has any loss of acreage.

One comment expressed a concern that most of the decisions, pursuant to these regulations, will be to reduce existing livestock use levels. The Bureau of Land Management does not anticipate that the final rule will result in an increase in decisions that reduce livestock use levels. The current regulation provides that the authorized officer must cancel or suspend a grazing preference when acreage is reduced, regardless of forage sufficiency. The revision would allow cancellation of the grazing preference on those allotments where there is a significant decrease in the public land available. The preference may be suspended where forage availability is temporarily reduced or remain unchanged where there is sufficient forage available, as determined by the authorized officer. Therefore, the final rule is unchanged.

One comment points out that the proposed rulemaking does not discuss the possibility of range improvements as a means to maintain grazing preference. Range improvements are addressed in a separate subsection (4120.3) which presently is not being revised. The final rule is unchanged.

Another comment suggests that the entire grazing preference system needs revision. This suggestion is beyond the scope of this rulemaking. Therefore, the final rule is unchanged.

One comment suggests that in order to cancel, suspend or modify a grazing preference the Bureau of Land Management would be required to conduct new range analysis and/or studies. This is not the intent of the rulemaking. The authorized officer generally has existing data from standard range analysis and/or study methods on file at the District or Resource Area Office to determine if an adjustment of the grazing preference is needed. Thus, only in a small number of cases would a new range analysis and/or study have to be initiated. Therefore, the final rule remains unchanged.

One comment recommends the first sentence in § 4110.4-2(a)(2) be changed to read as follows: "Grazing preference may be cancelled, suspended or modified in whole or in part through standard range analysis, study methods and/or available data acceptable to the Authorized Officer to protect the remaining public lands." It is the Bureau of Land Management's policy that any data used for decision making purposes must be gathered using standard methodologies consistent with standards established by the agency. Data from sources other than those which are standards of the agency are not acceptable. Therefore, the final rule remains unchanged.

One comment recommends changing the term "equitably" to "proportionately". The commenter proposed that the final rule at 4110.4-(a)(2) read: "* * * Cancellations or suspensions will be apportioned as agreed upon among authorized users or, in the event of failure to reach agreement, will be proportionately apportioned by the authorized officer among authorized users in direct proportion to their respective grazing preference." This suggestion is beyond the scope of this rulemaking and would, if accepted, result in a substantive change that the public has not been able to comment on. Therefore, this part of the subsection has not been rewritten.

The principal author of this final rulemaking is Bruce E. Dawson, Division of Rangeland Resources, Bureau of Land Management, assisted by Deborah Lanzone of the Division of Legislation and Regulatory Management.

It is hereby determined that this proposed rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and will not have significant impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Additionally, the final rule will not cause a taking of private property under Executive Order 12630.

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 et seq.

List of Subjects in 43 CFR Part 4100

Administrative practice and procedure, Grazing lands, Livestock, Penalties, Range management, Reporting and recordkeeping requirements.

Under the authorities set forth below, § 4110.4–2, Group 4100, Subchapter D, Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below.

PART 4100—GRAZING ADMINISTRATION—EXCLUSIVE OF ALASKA

Subpart 4110—Grazing Management

1. The authority citation for Part 4100 continues to read as follows:

Authority: 43 U.S.C. 315, 315a–315r, 1701 et seq., 1182d, and 98 Stat. 1837.

2. Section 4110.4–2(a) is revised to read:

§ 4110.4–2 Decrease in land acreage.

(a) Where there is a decrease in public land acreage available for livestock grazing within an allotment:

(i) Grazing permits or leases may be canceled, suspended, or modified as appropriate to reflect the changed area of use.

(ii) Grazing preference may be canceled or suspended in whole or in part. Cancellations or suspensions determined by the authorized officer to be necessary to protect the public lands will be equitably apportioned by the authorized officer based upon the level of available forage and the magnitude of the change in public land acreage available, or as agreed to among the authorized users and the authorized officer.

* * * * *

James M. Hughes,

Deputy Assistant Secretary of the Interior.

June 1, 1989.

[FR Doc. 89–17625 Filed 7–27–89; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

RIN 1004-AB45

[AA-660-00-4120-02; Circular No. 2621]

43 CFR Part 3470

Fees, Rentals, and Royalties

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: This final rule amends subpart 3473 of the Code of Federal Regulations to require that the underground royalty for all new and readjusted underground Federal coal leases be set at a flat rate of 8 percent of the value of the coal removed from the lease. In adopting this change, the rule removes the provision that allowed the authorized officer to determine a rate less than 8 percent, but not less than 5 percent, "if conditions warrant". This rule will be applied to new lease issuances and all existing Federal underground coal leases at the time of their next scheduled readjustment. This revision of the current regulations provides for a single consistent underground coal royalty rate, and recognizes that relief provided for under section 39 of the Mineral Leasing Act is the appropriate remedy for certain adverse lease-specific economic and other conditions affecting recovery of Federal coal reserves.

EFFECTIVE DATE: February 26, 1990.

ADDRESS: Suggestions or inquiries may be directed to Director (660), Bureau of Land Management (660), 1800 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Paul Politzer, (202) 343-7722, or Phillip C. Perlewitz, (202) 343-7722.

SUPPLEMENTARY INFORMATION: On July 29, 1988 (53 FR 28822), a proposed rule was published that would have replaced regulations at 43 CFR 3473.3-2(a)(1), which provide that for underground coal mining operations, "Royalty rates shall be determined on an individual case basis * * *." The proposed rule would also have modified 43 CFR 3473.3-2(a)(3), which states: "A lease shall require payment of a royalty not less than 8 percent of the value of coal removed from an underground mine, except that the authorized officer may determine a lesser amount, but in no case less than 5 percent if conditions warrant."

The proposal to adopt changes in the regulations for determining royalty rates on underground Federal coal leases evolved from a ruling by the United States Court of Appeals for the 10th Circuit (*Coastal States Energy Co.* v. *Hodel*, 816 F.2d 502 (1987)). This ruling held that while use by the Department of the Interior of an 8 percent royalty rate for underground coal leases at the time of lease readjustment was reasonable, the Department was also required to follow its own regulations by considering conditions which might warrant a royalty rate between 5 and 8 percent. The Court remanded the case back to the Department and stated:

> * * * it is error for the Bureau of Land Management to automatically fix the readjusted rate for all underground coal at 8 percent. Such completely ignores the ensuing provision [43 CFR 3473.3-2(a)(3)] that a lesser amount, but not less than 5 percent, may be set, "if conditions warrant."

In response to this ruling, the Assistant Secretary for Land and Minerals Management requested that the BLM study the various factors that should be considered in assessing the proper underground royalty rate for coal. Based on these studies, BLM prepared the proposed rule (53 FR 28822). The preamble of the proposed rule contained Chapter VII, Findings and Observations, from BLM's "Review of Issues for Setting Royalty Rates on Underground Federal Coal Leases", drafted in June 1988. This chapter suggested that the current market situation for underground coal in the Western States may not be as attractive, from the point of view of new investment, as it once was; that no long term contracts have been negotiated since 1982; and that spot-market prices for coal in the Western States have been falling since the early 1980's. The Findings and Observations listed possible negative effects of an 8 percent royalty on profitability of ongoing operations and raised issues that should be considered in establishing a regulatory policy to adopt a flat royalty rate at the time of lease issuance or readjustment, as opposed to the flexibility of the current regulations in allowing a rate between 5 and 8 percent "if conditions warrant" a royalty less than 8 percent.

The proposed rule noted the expense involved in conducting an individual case analysis of the lease royalty rate at the time of lease adjustment for underground coal leases. As of November 30, 1989, there were 312 Federal underground coal leases. Of these, 276 already have lease terms specifying a minimum royalty of 8 percent, because they were either issued, readjusted, or modified since 1976. Of these 276, 54 are producing. There are 36 Federal underground coal leases that are not yet due for readjustment (4 producing). Therefore, there are a minimum of 4 (producing only) to a maximum of 36 leases requiring analysis under the "if conditions warrant" provision of 43 CFR 3473.3-2(a)(3). Based on an estimate of about $30,000 to $50,000 per workyear per lease to conduct an individual analysis to determine "if conditions warrant" a rate other than 8 percent, the BLM estimated the administrative cost savings of changing the rule to establish a flat rate to be within a range from $120,000 to $1,800,000.

The BLM received a total of 72 comments on this proposed rule during the public comment period. These included 3 from western State Governors, 6 from U.S. Senators and Representatives, 15 from coal companies, 4 from electric utility companies, 24 from industrial customers of electric utilities companies in Utah and Colorado that use Federal coal to generate all or part of their electricity, 6 from industry associations and coalitions, 4 from environmental organizations, 3 from individuals, and one each from an Indian tribe, county government, chamber of commerce, private mineral lessor, regional council, union, and a representative of holders of an overriding royalty interest in Federal underground coal.

All except 2 of the comments supported a flat royalty rate of either 8 percent or of 5 percent, with a majority in favor of 5 percent. Of these two comments, one suggested a rate of 5 percent unless analysis supported a rate of 8 percent, and the other had no opinion on the choice of a royalty rate. A somewhat small majority expressly favored removal of the flexibility to select a royalty rate from within a range specified in the regulations.

All but 2 coal industry comments explicitly favored setting the royalty rate at 5 percent, as did all electric utilities, all industry associations, all

customers of electric utilities; the governors of Utah and Colorado, various members of the Congressional delegations of Utah, Colorado, Nevada, and Idaho, and a union, regional council, county government, and chamber of commerce. The 4 environmental organizations, the Governor of Wyoming, four members of the U.S. Senate Energy and Natural Resources Committee, a private mineral lessor, the Navajo Nation, counsel representing holders of a royalty interest in Federal underground coal, and the 3 individuals favored adopting a flat rate of 8 percent.

In general, those who support a 5 percent royalty based their rationale on a gradual deterioration in the underground coal mining industry in recent years, as evidenced by the loss of jobs in both Utah and Colorado. Governors and U.S. Representatives from those States appeared willing to accept a decline in royalty revenues over the near term in hope of fostering a stronger underground coal mining economy, preventing closure of additional mines, and keeping job losses to a minimum. Coal industry correspondents also stated that competitive pressures from lower-cost surface coal in the Powder River Basin and from other energy sources, both domestic and foreign, could be relieved somewhat if the Federal royalty rate were reduced. Electric utility company respondents felt the 8 percent rate was unfair to ratepayers because the production royalty costs were merely passed through to them, and at the same time hurt the efforts of the companies to market surplus power through the national grid system.

Comments supporting a flat rate of 8 percent cited the gain in coal production in Utah in the 1980's under the existing regulations, and argued that setting the royalty rate at a lower level would have little practical effect on coal production but would instead unfairly increase the economic return enjoyed by already profitable operators in that State. They preferred case-by-case royalty rate reduction for mines that are not profitable, using the Secretary's authority to grant temporary reduction of the royalty rate under section 39 of the Mineral Leasing Act (MLA). Specific comments are addressed in the following discussion.

Meaning of 10th Circuit Court decision

One comment noted that the decision of the 10th Circuit Court of Appeals did not imply or state that a national review of the Federal underground royalty policy was required or needed, and alleged that political motives were behind the proposed rule. According to several other comments, the circuit court decision merely remanded the leases in question for a determination "if conditions warrant" a lower royalty rate. Furthermore, according to the comment, the BLM had already addressed the "if conditions warrant" test in an internal 1987 instruction memorandum. One comment urged a determination of whether the procedural guidance in this memorandum had already satisfied the 10th Circuit's remand before continuing with the rule. Another comment questioned the need for considering a change in the regulations, since the court had found 8 percent to be reasonable and the proposed rule, in the view of the correspondent, presented no meaningful evidence to the contrary. The comment noted that the last time the BLM requested public comment on whether the rate was appropriate, it received no significant response.

Response: The ruling of the Tenth Circuit Court is interpreted under the existing regulations to require individual royalty rate analyses for all underground coal leases not yet readjusted or leases currently undergoing administrative or judicial review. The 1987 instruction memorandum cited in the comment was an interim measure. The Department decided that amending its regulations to be able to apply a single royalty rate for underground Federal coal leases had merit because such a step would avoid the administrative burden and costs to the Bureau of conducting individual lease-by-lease analyses. However, it was less clear what this rate should be. While it is true, as a comment noted, that no significant response was received on the choice of an underground coal lease royalty rate the last time comments were requested, that request was made in the 1979 rule establishing the Federal coal management program. Competitiveness within the coal mining industry has grown significantly since 1979. Because of concerns expressed by outside parties with the readjustment of leases to an 8 percent royalty rate—in the form of written correspondence as well as protests and appeals of Department efforts to readjust leases—the Assistant Secretary for Land and Minerals Management requested that BLM study underground coal markets and economics as they may have evolved since the regulation governing royalty rates was adopted in 1979. Based on all these factors, the Department determined it to be appropriate to request public comment in a proposed rule on the need for, and choice of, a single royalty rate for all underground Federal coal leases.

Selection of a royalty rate

Those favoring an 8 percent royalty rate cited as factors supporting their recommendation the overall pattern in coal production from underground mines in the Western States, the general health of the industry, and the failure of the industry to prove the need for a change from the *status quo*. One comment questioned why the Department would even consider "subsidizing" a slumping coal mining industry by lowering the royalty rate. The comment stated that such an action would occur at the expense of public treasuries desperately in need of funds. Another comment stated that the proposed rule is an attempt to undermine the intent of Congress because there is no detailed economic justification for changing the current procedure of issuing underground coal leases at, and readjusting leases to, 8 percent, particularly since, according to the comment, most underground mines are now operating profitably. Furthermore, the comment continued, the June 1979 Secretarial Issued Document establishing a Federal coal management program squarely placed the burden of justifying reduced royalty rates on lessees, not on the Department. The same comment questioned how the June 1988 BLM draft study could acknowledge that "Congressional and administrative processes utilized in establishing the 8 percent underground royalty rate in 1979 were appropriate" while attempting to change this Congressional intent on a bureau level. The comment stated that the proposed rule would insert a degree of unpredictability into a coal program dependent on a stable statutory, regulatory, and contractual framework, and therefore would act to unsettle one of the major goals of the Federal coal management program.

Several comments supporting a flat rate of 8 percent argued that setting the royalty rate at 5 percent would not assist the coal industry, which has weathered difficult economic conditions since 1980. A private mineral lessor observed that these difficulties had nothing to do with Federal royalty rates. Another comment argued that a large drop in employment in the underground coal mining industry in Colorado and Utah is the result of economic factors and productivity gains, not declining production due to an "oppressive" Federal royalty structure. Several others observed that even an elimination of the Federal royalty rate for underground

coal could not neutralize the cost advantage enjoyed by less expensive surface-mined coal from the Powder River Basin, because, among other factors, in most cases the mines in each region serve different markets. Another comment, noting the growth in underground coal production in Utah in the last few years, pointed to productivity gains that have succeeded in reducing costs by as much as $40 per ton. According to this comment, "the shift from man to machine now in process is essential to survival and would not be altered if royalties were eliminated". The comment stated that since 71 percent of Utah coal production was consumed by electric utilities in the State, an across-the-board reduction would only increase utility company profits without helping any mines that are in serious trouble.

One comment stated that all but 2 percent of the production from underground leases is currently subject to the readjusted 8 percent royalty rate, yet production continues to increase, led by a 66 percent increase in Utah between 1984 and 1987. The comment added that projected Utah production for 1988 is likely to be at an all-time high, and that a gradual rise in Federal royalty rates in the Powder River Basin has not deterred production in that region from increasing its share of overall Federal production from 43.3 percent in 1976 to 57.7 percent in 1986.

A radically different perspective was provided by comments supporting a flat rate of 5 percent. One comment included lists of factors that the Department should consider in arriving at a decision on the royalty rate. It noted the need for consideration of a variety of cost factors and hardships facing the underground coal mining industry, not just factors covered by the 1988 study, "Review of Issues for Setting Royalty Rates on Underground Federal Coal Leases." According to this comment, these factors should also include: an assessment of the impacts of higher royalties on captive operations or in situations where royalties are passed through to the eventual consumer; the effects of higher royalty rates on employment and communities that depend on this employment and on State and local economies; and a consideration of fuel-shifting to hydroelectric or co-generation of power, costs of regulatory demands and oversights, litigation and arbitration of coal supply contracts, the absence of new underground mines, erosion of markets to surface-mined coal, rail rates, and the impacts of State regulatory activity.

Supporters of a flat rate of 5 percent also argued that equity considerations or "fairness" issues should be key factors in setting the underground coal royalty rate. Underground operators were said to be disadvantaged because they paid a much higher royalty in absolute dollar terms compared to surface mine operators even though the Federal surface coal royalty rate was more than 50 percent higher than the underground rate (12½ versus 8 percent). A coal company cited as a further example the disparity between royalty payments for Federally-owned coal in Utah and privately-owned underground coal in the Illinois Basin in the Midwest. Federal production royalty was said to be 300 to 400 percent higher than the range of 2.0 to 3.0 cents per million Btu for operations in the Illinois Basin. A large number of comments alleged simply that the Federal underground coal royalty "extort[s] disproportionate payments from the [utility] ratepayers who . . . are bound to pay more than their fair share". One comment stated that the Federal government was receiving more than a "fair return" because the higher royalty rates make utilities' coal-generated electricity less competitive on the surplus power market. This comment characterized the imposition of an 8 percent royalty as a devaluation of the utilities' and their customers' investment in underground coal. One utility would have made a different decision regarding the source of coal for its power plants had it known in advance of the imposition of an *ad valorem* approach to royalty collection for Federal underground coal. Another comment stated that since underground coal is more expensive, it is more often utilized near the point of its production than surface-mined coal. Therefore, residents tend to pay a higher portion of the production royalties than do those living within States where surface mining of Federal coal is predominant. The comment concluded that surface royalty may be viewed as a "revenue producer" for the respective State, while the underground royalty becomes a "hidden tax". Another comment noted the depletion of coal reserves adjacent to railroad transportation, which will further burden operators and restrict development absent relief from an "excessive" royalty.

One comment cited the Mining and Materials Policy Act of 1970 as a direction to the Federal Government to foster private enterprise in the development of an economically sound and stable domestic mining industry. Comments provided by coal industry representatives, electric utilities, a regional council, industry associations, a coal industry coalition, two State governors, and several utility customers described the poor health of the underground coal mining industry in Colorado and Utah and the hardship caused by the Federal royalty structure. Several of these comments observed that for some mines the readjustment of lease royalty rates to 8 percent represented a jump of 1,500 percent compared to previous rates of 15 cents per ton, and setting the royalty rate at 5 percent could not help but stabilize or increase underground production and sales. One comment characterized this increase as having had a devastating effect on coal mining in Colorado, with the number of operating mines dropping to 19 in 1987 from a total of 51 in 1981 and coal production declining to 15.3 million tons in 1987 from 18.9 million tons in 1981. Another comment from Colorado described a decline in sales by one producer from 1 million tons in 1982 to less than 500,000 tons annually at the present time.

One comment contrasted a 1978 projection by the Colorado Geological Survey forecasting that Colorado coal production would reach 50.8 million tons by 1985 with the reality that less than 20 million tons of coal was actually produced and sold in that year, while projections for surface mine production in Wyoming's Powder River Basin, on the other hand, proved to be 20 million tons per year below the actual figure for 1985. Comments stated that employment in the Colorado mining industry dropped 50 percent since 1981 and that over 42 percent of the underground coal miners in the 3 major coal producing counties in Utah have been displaced. A study submitted by another correspondent projected 1,000 lost jobs in Utah and $27 million in lost personal income, accompanied by fuel cost increases to utilities burning western coal of $385 million per year by 2005, if the policy of readjusting Federal royalty rates to 8 percent were to continue. One comment cited the precarious competitive position of a mine operating on Federal underground coal reserves and expressed concern that closure of the mine would lead to closure of a steel plant employing a large work force.

Several comments stated that very little coal mined from underground Federal coal leases in Utah and Colorado is currently under long-term contract allowing for escalation of the purchase price to recoup increases in Federal royalty rates. One comment sought to link this directly with the adoption of the 8 percent royalty rate on

new and readjusted leases, and stated that long-term contracts would provide needed stability for a portion of production not marketed through the more volatile mechanism of spot-market sales. Another stated that no entirely new underground coal mine development has commenced in Utah since 1982, a reflection of the troubled state of the industry. Market share is being lost to Powder River Basin surface mine producers, according to another comment. While acknowledging that the trend cannot be blamed entirely on the Federal royalty rate of 8 percent, the comment argued that a flat rate of 5 percent would make underground-mined Federal coal more competitive. A comment stated that the imposition of an 8 percent rate on underground coal used to generate electric power in Utah has hurt power sales on the surplus market. Utah customers were characterized as "forced to bear a far greater share of the Federal royalty burden than any other group in the country." A utility comment cited a specific example of a $7 million increase in Federal royalties by 1989 which retail electric customers must absorb.

One comment from Utah stated that all production from a large private utility's underground coal mine is dedicated to the utility's generating stations. Therefore, the utility has no coal revenues as such that can be separated from electricity revenues, nor can return on coal investment be measured apart from the return on the entire utility plant. The utility therefore cannot measure whether these captive mines are uneconomic because of the 8 percent royalty rate. One comment included specific revenue and cost figures that suggested that savings generated by a change in the Federal royalty from 8 to 5 percent would enable a small underground coal mining company in Colorado to stay in business.

A number of comments stated that a 5 percent royalty rate would improve the competitive position of underground coal regionally and even internationally versus surface-mined coal, foreign-produced coal, and alternative fuels. Several comments argued the benefits of a reduction of electric rates in the Utah service area, and one noted that competing firms enjoyed an edge because they were served by cheaper hydroelectric power. Another comment acknowledged gains in productivity for underground coal mines, but observed that surface mining operations have improved their productivity even more. One comment remarked that a fuel adjustment cost is itemized on utility bills. If the utility's costs fall below a certain base level, the utility's ratepayers would benefit by reduced rates. Other comments echoed the theme that lower electricity costs would significantly improve the competitive position of industrial power consumers. One comment estimated that setting the royalty rate at 5 percent would translate indirectly to a $700,000 per year cost reduction by one electric utility that purchases Federal underground-mined reserves. This savings would be passed on to the utility's customers. A purchaser of electric power anticipated a drop in generated electricity costs of 2.2 percent. Overall savings to customers from setting the underground royalty rate at 5 percent are estimated by investor-owned electric utilities in California, Colorado, Idaho, Nevada, and Utah to total $9 million, according to this comment.

Another comment observed that while underground coal mining accounts for only about 10 percent of total western coal production, these operations have traditionally employed 30 percent of the western coal mining work force. On the other hand, comments supporting a flat rate of 8 percent cited a January 1988 BLM study which concluded that setting the rate at less than 8 percent would not discernibly increase coal production or halt the loss of jobs in the industry.

One comment cited the Federal government's market dominance in western coal and its economic power in influencing private and State rates within a coal producing region. Utah State coal leases, for example, provide that the lessee shall pay the State the higher of 15 cents per ton or the rate prevailing on Federal leases "of similar character". Another comment warned, however, that even the Federal government's near-monopolistic control over coal in the western United States cannot prevent Federal coal from losing market share to non-Federal coal production, especially in Colorado, if it sets its royalty rate at a level that distorts the market for coal.

Response: Selecting a royalty rate for Federal underground coal leases is an exercise of policy discretion authorized under section 7(a) of the Mineral Leasing Act. The economic and other justifications required under section 39 of that Act to reduce royalties below the statutory minimum do not apply to the decision on a regulation governing the royalty rate for underground coal leases. Because there are persuasive arguments supporting both the 5 percent and the 8 percent rate, it is within the Secretary's discretion to determine which factors shall receive the greatest consideration in arriving at a decision. The Secretary has decided to adopt 8 percent as the royalty rate for Federal underground coal, based on an analysis of all the evidence available.

Selection of either 8 percent or 5 percent would have advantages and disadvantages. There is no clear, analytically preferable choice, and the Department does not believe that the application of any mathematical model could lead to a technically "correct" decision. Other than requiring the Secretary to assure that newly issued leases receive bids not less than fair market value, Congress was content to leave the choice of an underground royalty rate to the Department.

Although the rule requested comment on the choice of a single royalty rate from within a range of 5 to 8 percent, all who expressed a view of this issue embraced either 5 percent or 8 percent. No support for a rate other than 5 or 8 percent was presented in the public comments.

Adopting a flat rate of 8 percent would essentially continue the *status quo*. Under existing regulation and policy to set the royalty rate at 8 percent for most underground Federal coal leases, coal production has fluctuated from year to year. According to Bureau of Land Management and Minerals Management Service data, Colorado Federal underground coal production was fluctuated within a range of 3.6 to 4.8 million tons annually since 1980. In Utah, Federal underground coal production since 1980 has fluctuated from a low of 6.7 million tons in fiscal year 1983 to a high of 15.4 million tons in fiscal year 1988. The comments noted that the recent high production figure was generated in the absence of new mines or long term contracts. However, BLM has recently received several lease applications in Utah and a few in Colorado.

The Department of the Interior recognizes the evolution since 1970's of highly competitive markets for both coal and electricity. Even with a royalty rate of 5 percent, there is no evidence that Federal underground coal would be able to compete successfully with surface-mined Powder River Basin coal that has bene sold for as little as $3.50 per ton in recent spot-market transactions. Also, adopting a 5 percent rate would not necessarily spur production nor necessarily have a measurable impact on mine employment. It is true that many of the underground mines operating in Colorado a decade ago are no longer in existence and that the mining work force has decreased sharply. However, the drastic changes

that have occurred in Colorado's underground coal mining industry may suggest that the problem of competitiveness is more deeply rooted and cannot be resolved by a 3 percent reduction in the royalty rate.

Recent production increases from underground Federal coal mined in both Utah and Colorado, suggest that the 8 percent rate, which is the Department's longstanding policy concerning lease readjustments, may not be the cause of any measurable decline in underground coal production. Further, the relief afforded by Section 39 of the MLA for reducing royalty rates offers individual Federal lessees more latitude from the volatility of competitive coal markets by allowing a reduction to 2 percent under certain circumstances than afforded by the adoption of a 5 percent rate.

Since coal industry conditions differ in the two States (Colorado and Utah) from which over 90 percent of the underground Federal coal production is derived, the establishment of a single royalty rate may seem to fit conditions in one State but not the other. As to arguments that a particular rate is "fair" or "unfair", the Department is required to follow a policy that protects the interests of the United States as the owner of the public's coal resources while recognizing the needs of State government, the industry, and other affected parties, as well as the intent of Congress. Therefore, bearing in mind that multiplicity of concerns regarding the establishment of a national royalty rate policy for underground Federal coal, it has been decided to set a flat royalty rate at 8 percent and to address the economic concerns of Federal lessees through the provisions of Section 39 of the MLA and established royalty rate reduction guidelines. However, should the conditions surrounding the production of underground Federal coal change and become such that a lower royalty rate is uniformly more equitable than the 8 percent rate which has historically been applied to production from underground Federal coal leases since the enactment of FCLAA, the decision will be reconsidered.

The concerns of both Federal and non-Federal coal lessees in States where Federal coal is predominant, and where the royalty rates on Federal leases influence and in some States are directly linked to the rates on State and private leases, are understandable. The Department recognizes the important economic consequences of its choice of a royalty rate for underground coal, and the influence of this decision on coal lease royalty rates outside of the Federal sector. The economic consequences on the recipients of the royalty revenues of lowering the royalty rate are apparent. In some cases where profits are high, the reduction of royalty rates would represent a loss of royalty revenues to the public. In balancing all of the various interest, the choice between a 5 percent or an 8 percent royalty rate is close. With this in mind, the royalty rate is maintained at 8 percent and individual Federal lessees are encouraged to seek royalty relief, if it is needed, through application for royalty rate reductions under Section 39 in accordance with BLM's guidelines.

In the past 2 years, BLM has received only three royalty rate reduction applications from underground Federal coal lessees in Colorado and no applications from Federal lessees in Utah. This is an indication that the 8 percent royalty rate applied to leases at the time of issuanace or readjustment is not overly burdensome.

The preponderance of the evidence suggests that a high degree of competition for coal supply contracts and for the sale of electric power generated by coal and other energy sources has evolved in the Western States since 1979. This competition has forced producers of underground coal to take steps to reduce their costs, and where these efforts have been successful production has increased. During this same period, the Federal and State royalty income from underground coal production grew as well. An 8 percent royalty rate is appropriate, and an *ad valorem* based royalty allows for automatic adjustments to price fluctuations.

In arriving at a decision to maintain an 8 percent royalty rate for underground coal leases, the Department took into consideration all of the comments and detailed analyses that were submitted for this rule. Even if it is true that increased production in Utah since 1979 does not necessarily by itself indicate the health of an industry, the Department believes that maintaining an 8 percent royalty rate while encouraging individual lessees to apply for royalty rate reductions using the BLM's guidelines is an appropriate decision, given the differences between the local coal industries. The establishment of a flat 8 percent rate allows for a fair return for the use of public resources, and using the authority under Section 39 of the MLA to grant royalty reductions allows for more extensive consideration of the unique circumstances of individual Federal lessees.

Finally, the decision will encourage lessees operating at the margin to be more active in seeking royalty rate relief by application under an appropriate category of the BLM's guidelines. This avenue allows lessees to receive temporary relief in the hope of further improvement in the market for underground coal.

Flexibility on setting the lease royalty rate

The vast majority of respondents offering comment on whether the Department should maintain flexibility in the regulations to offer a rate between 5 and 8 percent "if conditions warrant" at the time of lease issuance or readjustment favored a flat rate of 5 percent across the board. Only two comments stated a preference for retaining flexibility in the regulations, but left it to the Department to decide whether this added flexibility was practical to administer. Others supporting elimination of this regulatory flexibility either offered no rationale or recognized that the benefits of lease-by-lease review were probably outweighted by the administrative complexity of this undertaking. The statutory authority to adjust royalties downward using Section 39 of the MLA satisfied some respondents that individual hardship cases could be addressed for additional royalty relief, if needed. One comment stated that adoption of an equitable and reasonable flat rate would virtually eliminate the need for using the Section 39 authority. Of the comments supporting retention of the flexibility to adopt a rate on a case-by-case basis, one stated that the analysis could be done as part of an economic evaluation of the proposed lease tract and the other recommended that 5 percent be the norm for newly issued and readjusted leases with a rate up to 8 percent available only if it could be demonstrated that conditions warranted a higher rate.

All but one of the comments addressing the implementation of a flat royalty rate urged that the 5 percent rate be made available prospectively, upon request, to all underground coal lessees for leases that were issued or readjusted to 8 percent. Some comments called for the effective date for this rate change to coincide with the effective date of the final rule and for the new rate to apply through the next readjustment date of the individual lease. One comment specified that lessees whose readjustments to 8 percent have been protested and are currently in the appeals process should be allowed to pay a rate of 5 percent for the period of time beginning at the date of lease readjustment. Another comment stated

that making lessees wait until their next readjustment was clearly unfair and would disproportionately penalize lessees in States where private and State rates are directly linked to the Federal rate. A comment supporting adoption of a flat rate of 8 percent suggested that the administrative costs of amending the lease terms on underground coal leases be listed and analyzed if a flat rate below 8 percent is adopted, and that this analysis should be available for comment.

Response: Application of a flat rate to new leases and to existing leases is administratively simpler than the lease-by-lease analysis required under current regulations. Also, removing the provision requiring an "if conditions warrant" analysis elminates the redundancy of requiring lease-by-lease analyses in two separate procedures: lease issuance or readjustment, and Section 39 royalty rate reduction. The decision to adopt a flat rate of 8 percent will be applied to all existing Federal underground coal leases at the time of the next scheduled readjustment, as well as to new lease issuances. The 8 percent rule applies only to new leases issued after the effective date of the rule and to those leases whose readjustment anniversary dates occur after the effective date of this rule.

Compliance with provisions of the Administrative Procedure Act

Two comments suggested that directly issuing a final rule both to set a fixed royalty rate and to explain to which leases it will apply would constitute a violation of the Administrative Procedure Act because the notice of proposed rulemaking did not publicize the substantive contents of the regulations to be issued. The preamble to the proposed rule quotes from the draft study that consideration of a royalty rate less than 8 percent "should be based on an evaluation of the objectives of the Federal Coal Management Program * * * and the effect of the royalty rate on these objectives * * *." If these objectives—or some other criteria—are to be the basis for the royalty rate decision, then they should have been listed in the preamble or, in the words of one of the comments, "the public is left to shoot at a shifting target, in the dark." The comment went on to suggest that the Department should have provided some indication of which rate it favors or at least submitted facts and argument in support of alternative rates. If the Department intends to set the rate at less than 8 percent, it should re-propose the rule and justify the new rate with supporting evidence, and then consider and respond to public comment before final action. One comment specifically requested that a public hearing be held in Denver, Colorado, prior to any final decision.

Response: The proposed rule specifically requested public comment on whether the royalty rate should be 8 percent, 5 percent, or some value in between. This was fully consistent with the notice of proposed rule requirements established in section 4(b) of the Administrative Procedure Act, which provides that a rule shall be preceded by a published notice of "either the terms or the substance of the proposed rule or a description of the subjects and issues involved." Therefore, the choice of a rate of 8 percent clearly is consistent with that Act and with the proposed rule. Because the Department has adopted a final underground coal royalty rate that lies within the range of rates set forth in the notice of proposed rule, the Office of the Solicitor has determined that the Department has fully complied with the statutory rulemaking requirements. The Department and the BLM have for some time been aware of opposition to the 8 percent royalty, particularly from coal lessees protesting their lease readjustments from a cents-per-ton basis to an *ad valorem* rate that by the coal lessees account effectively increased royalty payments, over 1,000 percent for some. The Department and BLM have been equally aware of support for the 8 percent royalty rate, particularly from holders of overriding royalties whose interest is in maximizing revenue, and others who believe that development of Federal minerals should be accomplished while maximizing revenue to the Government. Extensive analytical support for adoption of a flat royalty rate has also been provided in the comments on the proposed rule, and the Department has more than enough information to proceed directly to a decision on the final rule without requesting further public comment or holding a public hearing.

Adequacy of environmental analysis in support of rule

A few comments accused the Department of failing to conduct sufficient analysis to consider the environmental impacts of the proposed rule. Two stated that any change in the underground coal royalty rate regulation is required to be accompanied by detailed revisions of the Federal Coal Management Program Environmental Impact Statement (EIS) Supplement. Several reasons were given for this comment: the BLM's June 1988 draft study's finding that current market conditions had changed "significantly" and warranted a lower rate "for all underground leases"; the statement in the draft report that "any policy change should be reviewed in terms of its environmental impact"; that an underground royalty rate of 8 percent formed an integral part of the EIS Supplement; and that the possible mining of new areas and the substantial reduction of mitigation and other payments derived from the Federal and State shares of royalty collections may significantly affect the quality of the human environment. It was further suggested that the proposed rule significantly altered the basis for the 1980 Secretarial Issue Document on Fair Market Value and Minimum Acceptable Bids for Federal Coal Leases, and thereby necessitated revision of that as well. One comment pointed out that coal mining has adverse impacts on the environment no matter how carefully it is conducted and that the burning of coal contributes disproportionately to the greenhouse effect. Government policies should be adopted that will *reduce*, not encourage, the use of coal, this comment asserted.

Response: The citation for the June 1988 drafted study referred not to the 1985 EIS Supplement but to the 1979 Federal Coal Management Program EIS. Nevertheless, the 1985 Federal Coal Management Program EIS Supplement forecast between 27 and 30 million tons of coal production by 1990 for the Uinta-Southwestern Utah region which includes Utah and western Colorado underground mines. The most recent BLM forecasts show this previous estimate to be overly optimistic. Actual fiscal year 1988 production for this region was 16.7 million tons, and it is now anticipated that 1990 production from the region will not exceed 20 million tons, and might be less than 18 million tons. The decision to set the underground royalty at a flat rate of 8 percent, which is not a reduction, does not significantly alter the impacts on the human environment that have been determined in the 1985 EIS Supplement, and there is no need to conduct additional environmental analysis for this rule. The environmental assessment prepared for this rule concluded that there would be no significant impacts on the human environment if the rule were adopted.

While Congress in the Federal Coal Leasing Amendments Act declared that State shares of mineral leasing revenues should be used for mitigation of the impacts of Federal mineral development, State governments

actually decide to what purpose they put these funds. Funds available for mitigation efforts in those States will be greater if the royalty rate is set at 8 percent.

The 1979 Secretarial Issue Document on Fair Market Value and Minimum Acceptable Bids for Federal Coal leases needs no revision because it has been amended since that time by Secretarial decision and changes to the coal management regulations. Even if a reduction in the royalty rate for underground Federal coal had been adopted in this rule, this reduction probably would not result in an increase in coal production beyond levels projected in the Federal Coal Management Program Final Environmental Impact Statement Supplement, October, 1985.

Allegations that the rulemaking process was not objective

A number of comments questioned the objectivity of the Department's rulemaking process by which the proposal was prepared. One noted that coal industry pressures to adopt the lowest legal royalty rate would color any objective analysis. Another alleged that inappropriate influence may have been exercised by a Department official and the Governor of Utah to orchestrate the drafting of the proposal. This and another comment specifically accused the Department of abuse of administrative discretion by taking a predetermined position as an advocate and industry spokesman, contrary to the accepted role of an objective public official. If this were true, according to the comment, then the call for comments on the proposed rule could be interpreted as a "perfunctory compliance with form". In support of this contention, the comment pointed out that the official frequently visited the State of Utah and met with representatives of the Governor's office, a prominent Federal coal lessee, and a large Utah electric utility company over a period of several months preceding the proposed rule, held similar meetings in Washington, D.C., where he allegedly received advice from the Governor of Utah and promised in return to set the royalty rate at 5 percent; and may have attempted to suppress a January 1988 BLM study that found no basis for changing the practice of setting the royalty on new and readjusted leases to 8 percent.

Response: Abuse of the administrative process is a serious charge that the Department of the Interior does not dismiss lightly. However, these comments have grossly mischaracterized discussions among Departmental officials, coal lessees, and State officials. Moreover, the originator of one of these comments was included in at least one discussion covering all the issues.

The Department began an internal review of the regulation concerning the underground royalty rate following the decision by the U.S. Court of Appeals for the Tenth Circuit in *Coastal States Energy Co.* v. *Hodel*, 816 F.2d 502 (10th Cir. 1987). By the end of 1987, BLM was preparing a study of the effect of the royalty rate on coal production. During this period, several underground coal lessees and government officials from the State of Utah contacted the Department and recommended lowering the standard royalty rate for underground coal rather than reviewing it on a case-by-case basis. In January 1988, a draft study was discussed with the Assistant Secretary, Land and Minerals Management. As discussed elsewhere in this preamble, the draft study concluded that coal production would not be affected to any noticeable extent by setting the royalty rate below 8 percent. The draft study was distributed outside the Department to affected parties, although there was no formal announcement of its availability. Following Department review of the draft study, and of comments received on the draft study, the Assistant Secretary directed BLM to continue its study of the royalty rate in the context of the overall vitality of the western underground coal industry.

In June 1988, a second draft study was prepared. The study suggested that the market for western underground coal was not as robust as it was when the existing regulations were promulgated in 1979. Based on this study, the Assistant Secretary directed BLM to prepare a proposed rule requesting public comment on whether a single rate for underground coal leases should be set by regulation at a value of 8 percent, 5 percent or some rate in between. At no time did the Department make any commitment concerning the royalty rate that is the subject of this final rule.

Availability of all studies and analyses used in rule

One comment requested that the Department make available the studies used to support the analytical framework of the proposed rule and conduct additional analyses where needed prior to a final decision. Specifically, it was requested that a State-by-State analysis of revenue impacts be completed before the proposed rule is finalized. Concerns were also voiced about the statement in the June 1988 BLM draft study that the Department had received comments from industry, State governments, and members of Congress. A comment requested copies of all written communications and transcripts of verbal communications on the appropriateness of the royalty rate given current market conditions, and questioned whether some of these comments may have been provided *ex parte*.

A comment supporting a flat 8 percent royalty rate incorporated by reference a January 1988 draft BLM study whose primary conclusion was that market factors played a far more important role in determining coal economics, mineability, and marketability for Federal underground leases in Colorado and Utah than the Department's royalty structure. One comment noted that the proposed rule constituted a "radical departure from the earlier [January 1988] Department perspective."

Response: The administrative record for this rule contains several studies either completed for the Department or submitted with comments. These studies have been available to the public in accordance with Department procedures and the Administrative Procedure Act. The purpose of the June 1988 draft study was not to justify a particular underground royalty rate. Rather, this study demonstrated that conditions in the coal industry, especially the segment of the industry mining Federal coal by underground methods, indicated a need to review the Department's underground royalty rate regulations.

Taken as a whole, the studies and other analyses in the administrative record for this rule offer a series of viewpoints on the impacts of the Federal coal underground royalty rate on coal production, local economies, and revenue receipts. It is the Department's position that sufficient analysis exists upon which to base a decision. No discussions were held with interested parties in violation of *ex parte* guidelines. All communications received after publication of the proposed rule are available to the public as part of the administrative record, along with any other correspondence and reports germane to the rule.

Value-based vs. alternative basis of determining royalty

One comment stated that an *ad valorem* royalty rate (a percentage charged against value of the coal mined, as opposed to an absolute rate that does not fluctuate with market prices) is not explicitly required by Federal law. This comment recommended using cents-per-ton royalties for underground coal as

had been done on most leases before passage of the Federal Coal Leasing Amendments Act. Another comment noted that because an *ad valorem*-based royalty increases in dollar value as cost of production (as reflected in the coal selling price) rises, there is a disincentive to produce the more expensive deeper reserves. One comment stated that the coal industry has repeatedly recommended that the coal royalties be levied on a cents-per-million Btu basis to eliminate disproportionate variances between surface and underground royalty in dollar terms. In opposition to these comments, another argued that royalties should continue to be calculated on a percentage basis of value because coal prices adjust to market forces of supply and demand, and this method of calculation captures a share of value for the public that is more faithful to market conditions than a rate in cents-per-ton or cents-per-million Btu.

Responses: A change from the currently utilized *ad valorem* basis of charging royalties on production to a royalty basis that would use cents-per-ton or to a normalized formula using cents-per-million Btu would have to be applied to surface as well as underground coal in order to be truly equitable. Further, because Congress prescribed an *ad valorem*-based rate of 12½ percent of the value of surface-mined coal in enacting the Federal Coal Leasing Amendments Act, and because Congressional intent was quite clear in regard to use of a value-based rate for underground coal, the law would have to be changed first before the Department could consider this suggestion.

Effects of royalty change on Indian-owned coal

One comment urged the Secretary of Interior to assess carefully the consequences of adopting a rate less than 8 percent on the interests of all Indian tribes before taking such action. Specifically, the comment stated that the Secretary is required to protect Indian resources from loss of value as a result of changes to the Federal coal management program. Other objectives to the coal management program, such as those set forth in the BLM's June 1988 draft study, "*must be subordinated* to the Indian tribes as beneficiaries of the Secretary's trust responsibility" (emphasis added). Also, the Secretary "is constrained by his fiduciary responsibilities and must not show deference to the desires of industry to reduce royalty payments." Finally, the letter cited a ruling by the Tenth Circuit Court of Appeals in the case of *Jicarilla Apache Tribe* v. *Supron Energy Company*, 782 F.2d 855, (10th Cir. 1986), that this fiduciary duty required the Secretary to choose an action better promoting the tribes' interest when he is presented with alternative interpretations or alternative actions. The comment insisted that the Department demonstrate that the final decision on the coal underground royalty rate: (1) will not make Indian coal less competitive than Federal coal, and (2) will have a revenue-neutral impact on Indian mineral owners. The letter questioned whether the Department could demonstrate such revenue-neutrality.

Response: The relationship between Federal underground coal royalties and revenues derived from the sale of Indian-owned coal has been assessed. Prior to enactment of the Federal Coal Leasing Amendments Act, Indian leases as well as most Federal leases carried royalty terms expressed in cents per ton of coal mined. The Department's action to issue new leases and readjust existing leases using a percentage royalty of generally 8 percent of the value of underground coal and 12½ percent of the value for surface coal has had a beneficial effect on the revenues generated for Indian tribes: since 1976, Indian coal lease royalty rates have risen to reflect the higher rates on Federal leases.

There are no underground coal mines operating on Indian lands. From a practical standpoint, surface mines in New Mexico and Arizona are producing the only coal from Indian lands that might be considered to be even in indirect competition with Federal underground coal. Even if the royalty rate were lowered, as suggested in many comments, the delivered cost of Federal underground-mined coal from Colorado and Utah to power plants utilizing Indian-owned coal would remain above the delivered cost of the Indian coal to these same facilities. Therefore, underground coal from either Utah or Colorado coal will not compete with Indian-owned coal, at the site of coal utilization, under this final rule. The delivered cost at relevant power plants and the break-even cost at the supplying mines bears this out. Power plants currently using Indian coal rely on those mines for their fuel source. Regardless of the degree to which a 5 percent royalty rate would possibly affect the competitiveness of Indian-owned coal, the Department has decided to set a flat rate of 8 percent for underground Federal coal reserves.

Revenue impacts of changing the underground coal royalty rate

Several comments addressed the issue of revenue implications involved in setting the Federal underground coal royalty rate at less than 8 percent. One comment criticized the proposed rule for failing to discuss the impact of a 5 percent rate on royalty collections and for failing to structure the rule so that comments could be solicited on raising the royalty rate *above* 8 percent. Another comment noted the Department's strenuous efforts in court to collect royalties on readjusted leases and felt the rule now intimated an inclination to "capitulate" and to "give away a portion of the underground royalty which has been so steadfastly and successfully defended." The same comment cited an analysis prepared by the Utah Energy Office in November 1987 that indicated a lowering of the royalty would almost certainly lead to reduced State royalty revenues. Another comment cited the January 1988 BLM study, which predicted a reduction in Federal and State revenues of between $18.2 and $20.2 million from the current level if the royalty rate were set at 5 percent. Another comment observed that while production in Colorado had declined sharply between 1981 and 1986, Federal and State royalty revenues increased from $13.1 to $20 million between 1984 and 1986 as lease readjustments raised royalty rates significantly. The Governor of Wyoming objected to the implication in the proposed rule that administrative cost savings to the BLM of adopting a flat rate of 5 percent could somehow offset losses in Federal and State royalty income of this magnitude.

The Governors of Utah and Colorado commented that higher royalty income should not be a goal if this is accomplished at the expense of the underground mining economies in their States. They provided calculations supporting their contention that a flat rate of 5 percent would have broader long-term benefit than a higher rate. Colorado expressed a willingness to absorb a reduction in Federal coal royalty revenues of what would amount to $3.5 million in order to alleviate the current depressed status of the State's coal industry. The Governor provided analysis supporting his contention that a reduction in the royalty rate across the board to 5 percent for all underground Federal coal leases would actually have a positive impact on total tax revenues for his State. The Governor of Utah noted that Utah ratepayers indirectly pay 58 percent of the mineral lease

moneys that the State receives for Federal coal, and that his State has recently reduced its oil and gas royalty rate from 16⅔ percent to 12½ percent or, in some circumstances, 8⅓ percent. The Governor of Colorado commented that the State's general assembly has reduced the State's severance tax 40 percent for a 6 year period.

A comment in the letter from one congressional delegation downplayed the revenue effects of a drop in the royalty because only 8 percent of all Federal coal produced in the United States comes from underground mines. An industry comment cited a study by the Western Coal Traffic League which demonstrated that high royalty rates are having an adverse impact on both State and Federal revenues and socioeconomic development for most western coal producing States, contributing to reductions in coal production, Federal royalty revenues, and local taxes. Another comment supported this view, and went on to say that basing royalty rate decisions solely on revenue considerations is at odds with the Secretary's public lands stewardship responsibilities, but rather is similar to the role of a private land owner whose intent is more likely to be to maximize profits.

A study accompanying one comment warned that for 5 of the 6 major Federal coal producing States, increasing Federal royalties to the full readjusted rates of 8 percent for underground coal and 12½ percent for surface coal will lead to production losses in the 1 to 4 million ton range, generating State revenue losses that will offset any gains generated by higher royalty rates. According to the study, these losses will occur in regions that are already marginal producers and will be aggravated by users switching to alternative fuels, including low-sulfur non-Federal coal from some Central Appalachian seams, coal imported from Colombia and Australia, oil and natural gas, hydroelectric power, and nuclear power.

Response: The proposed rule did not request comment on a royalty rate above 8 percent for the same reason that it did not request comment on a rate below 5 percent. The 5 to 8 percent range prescribed in the proposal is in the range prescribed by the 1979 regulation. The objective was to request comment on the relative advantages of eliminating the need to evaluate all leases on a case-by-case basis at the time of lease readjustment and to set the rate at an appropriate single level from within the existing range. The public, however, was not precluded from advising the Department on the merits of a value outside this range.

Maintaining public revenues while guarding the economic welfare of Federal coal lessees is best accomplished by establishing a flat rate of 8 percent for underground Federal coal leases and encouraging in appropriate circumstances the use of the royalty rate reduction procedures. This decision will also eliminate the redundancy of the current regulations which require a case-by-case analysis for royalty rate determination to be conducted for all underground leases and allow for separate royalty reduction procedures.

Requirements for fair market value

One comment observed that the royalty rate provisions of the Federal Coal Leasing Amendments Act sought to assure that the public would receive fair market value for its coal resources in the future and reflected Congressional concerns about excessively low receipts from Federal coal development in the past. Another argued that an across-the-board reduction of the royalty should only be accomplished after a re-evaluation of the fair market value implications and payment by lessees of a compensatory cash bonus to the government.

Response: The Federal Coal Leasing Amendments Act (FCLAA) states: "No bid shall be accepted which is less than the fair market value, as determined by the Secretary, of the coal subject to the lease" (30 U.S.C. 201(a)(1)). Although the Department generally considers royalty revenues to be part of the total "value" of a lease, the legal requirement of "fair market value" applies only to leases sold at lease auction after enactment of FCLAA. For coal lease tracts sold after enactment of FCLAA, high bids are evaluated by the Department and only those that were determined to meet the test for fair market value are accepted. The production royalty rate announced in the Notice of Sale and set forth in each individual lease's terms and conditions is a contractual term that can be changed if the lessee and the lessor (the Federal Government) agree to make such changes in accordance with the MLA. Therefore, fair market value is not a conclusive factor in selecting royalty rates, and in any event this final rule maintains the rate at the current 8 percent.

Interference with U.S. Senate consideration of royalty issues

A letter signed by 4 members of the U.S. Senate Energy and Natural Resources Committee stated that it is premature for the Department to be changing the long-established royalty rate prior to Congressional action because the Congress is currently addressing this issue.

Response: The Department acknowledges Congress's interest and concern regarding the royalty rate for underground Federal coal leases and is aware that Congress is planning to address the issue. In the interim, the Department has decided to set a flat 8 percent royalty rate for underground Federal coal leases and to continue to encourage Federal lessees who are experiencing economic hardships to seek relief through use of BLM's royalty rate reduction procedures.

Connection between surface and underground coal royalty rate

A comment supporting a flat rate of 8 percent accused the Department of seeking to lower the underground coal royalty rate in the face of rising underground Federal coal production as a first step toward establishing a strong case in equity for surface mine royalty reduction. The comment alleged that Department officials have acknowledged that lower surface rates may naturally result from a reduction of the underground rate. The Governor of Colorado and several industry comments expressed hope that a reduction in the underground rate would set a precedent for Congressional action to reduce the surface rate, especially in Colorado where operators face high costs. One comment doubted that a parallel reduction in the surface coal royalty rate would have much of an adverse impact on underground production because markets, locations, and Btu contents vary radically for surface and underground deposits.

Comments reached different conclusions regarding the impacts of the choice of an underground royalty rate on competition with surface-mined Powder River Basin coal. Some supporters of a flat rate of 5 percent for underground Federal coal stated that the Department's use of an 8 percent royalty rate for new and readjusted underground coal leases had penalized underground coal producers in their competition with lower-cost surface coal in the Powder River Basin. Comments supporting a flat rate of 8 percent used different assumptions of coal prices to bolster their case that the opposite was true. They argued that setting a flat rate of 5 percent for underground coal would give underground producers a disproportionate advantage.

Response: This rule is limited in scope to underground mining operations. Regardless of the Department's view on

an appropriate rate for surface coal production; no adjustment of the statutory royalty rate on Federal surface coal leases can be made without an Act of Congress.

In attempting to determine how a royalty rate lower than 8 percent for Federal underground coal would affect competition between underground and surface mine operations, BLM studies have shown that the outcome would depend to a great degree on the choice of coal price assumptions used in the analysis. Those providing comments with differing opinions on whether the rate for underground Federal coal leases should be 5 percent or 8 percent chose price assumptions favorable to their point of view. From an objective viewpoint, underground coal producers have not been "penalized" by the current regulations, which allow for a lower rate than the 12½ percent royalty rate established by statute. However, if some Federal underground coal lessees have suffered economic hardship due to the changing industry conditions, the Department encourages these lessees to apply for relief under the royalty rate reduction guidelines.

Authority granted under MLA Section 39 to reduce royalties

About half the comments responding to this rule discussed the relationship between the rule and the availability of Secretarial authority to reduce royalty rates under section 39 of the Mineral Leasing Act (30 U.S.C. 209). Many of the comments supporting a flat 8 percent rate, noting the profitability of individual underground coal mining operations in the western States and the growth in production and productivity, argued that there was no need to reduce the regulatory royalty rate because specific instances of hardship could be addressed through the instrument of the BLM's royalty reduction guidelines. These comments, including those of members of the Senate Committee on Energy and Natural Resources, the Governor of Wyoming, and others, urged the Department to make use of the flexibility granted under section 39 to provide temporary relief through royalty rate reduction on a case-by-case basis. The governor's comments dismissed traditional industry objections to the cost and administrative burden of complying with BLM guidelines for royalty rate reduction, asserting that the clear economic benefits of a temporary rate reduction more than compensated for the time needed to prepare the required documentation.

Several other comments disagreed, maintaining that section 39 does not provide an acceptable substitute for the adoption of appropriate royalties at the time of new lease issuance and lease readjustment. These comments argued that a new regulatory royalty rate should apply across the board, especially because they are dissatisfied with the way in which the Department has chosen to exercise Secretarial discretion under section 39. One comment specifically criticized the BLM's royalty rate reduction guidelines because they exclude even marginally profitable operations from qualifying for a rate reduction. The comment's position is that the proposed rule offered the only available means for setting a lease royalty rate which is generally appropriate for its circumstances. Another argued that the rule was necessary because the royalty reduction guidelines do not consider hardship to electric utility ratepayers who bear the burden of the underground coal production royalty that is passed through to them. A third comment disparaged the guidelines as "so stringent and limited to such a short period of time that they cannot remedy or justify the BLM's failure to select a reasonable royalty rate in the first instance." One comment complained that the guidelines specifically exclude interest costs and overriding royalties from royalty rate reduction calculations, thereby preventing small producers from qualifying for a royalty rate reduction. Another comment protested that the Department has taken far too narrow a view of its authority under section 39, and urged that royalty reduction be made available at the time of lease readjustment.

Response: Although this rule is not an exercise in royalty rate reduction under section 39, a brief clarification of the royalty rate reduction guidelines may be in order. The BLM royalty rate reduction guidelines were designed to provide temporary relief for operations that could not be successfully operated under the lease royalty rate; to promote development of a resource; and to promote conservation and the greatest ultimate recovery of resources that would be left unmined unless the rate were lowered for a short period of time. Marginally profitable operations are not excluded from seeking royalty rate relief under certain categories of the guidelines. For instance, category 1 of the guidelines allows for a temporary reduction if Federal coal reserves are in danger of being bypassed due to the existence of adverse engineering and geologic conditions. Also, the period of time over which a reduction applies varies depending upon the category under which the lessee applied. Furthermore, the guidelines allow for consecutive reapplications provided the lessee can demonstrate that the adverse conditions still prevail.

Royalty rate reduction under section 39 will continue to be available after the effective date of this rule under the criteria established in the BLM royalty rate reduction guidelines. However, this rule is designed to implement the Secretary's authority under section 7(a) of the Mineral Leasing Act to establish a royalty rate for coal mined by underground methods.

Conservation of the resource

A number of comments supporting a flat rate of 5 percent advanced rationale suggesting that such an action would encourage the greatest ultimate recovery of coal and in the process prevent the loss of revenues and jobs over the long term. A Western State governor commented that the current 8 percent royalty caused a "disproportionately higher royalty burden on underground coal" and therefore "does not promote orderly and timely development of underground coal." Another comment stated that the 8 percent rate could mean that the reserves remaining at depth will not be mined, due to unfavorable economics. Another comment stated that the loss of 1,500 jobs since 1981 in Colorado's mining industry has been costly to the U.S. Treasury in terms of lower royalty revenues and Federal income taxes, and a deepening of the recession that began in 1981 in coal mining areas. One comment added that the existing royalty rate structure discourages the development and production of Federal underground coal to the extent that utilities may be forced to use alternative fuel sources.

Response: The Department of the Interior believes that using the royalty rate reduction procedures will assist marginal producers to stay competitive and to survive in the expectation of improved market conditions, as well as encourage the greatest ultimate recovery of the resource.

Comments on June 1988 Study

Many comments were received on the June 1988 draft BLM study cited and excerpted in the July 29, 1988, proposed rule. While several industry comments felt the draft study provided a valid basis for establishing an underground coal royalty rate at less than 8 percent, other comments were highly critical of its methodology and conclusions. One comment provided a detailed line-by-line critique, whose central focus was that the draft study (1) contained many

unsupported contentions, (2) failed to explain the policy underpinnings of the Federal coal program, (3) implied that the coal industry was entitled to a greater share of profits than necessary to stay in business, (4) contained numerous inconsistencies and factual errors, and (5) exhibited a cavalier disregard for the importance of royalty collection in times of large Federal budget deficits. The comment strongly advised that the shortcomings in the June draft be resolved in a final analytical report, particularly if the decision is made to establish a flat rate below 8 percent. Another comment contended that the study did not recognize that factors independent of the royalty rate and beyond the government's control are the driving force in the demand for coal from Federal coal leases in the Western United States. The primary factors that determine the demand for Utah coal, such as construction of additional electrical generation and other heavy industry facilities, are not responsive to Federal royalty rate changes contemplated for underground coal. Furthermore, according to the comment, the study failed to account for the growth, rather than decline, in Utah coal production over the past 10 years while effective royalty rates have increased. The comment concluded that production increases have occurred as a result of factors beyond the influence of royalty rates.

Other critical comments called the draft study a "subtle advocacy for a reduction in the current royalty rate", not an objective study as would be appropriate for an issue of this importance. The discussion in that report was also described as meaningless because it failed to focus on the small underground segment of the industry but instead addressed the coal industry as a whole. Another comment faulted the study for failing to note that new technology, such as longwall mining, is increasing underground mining efficiency and decreasing costs. Several comments criticized the failure to cite the BLM's January 1988 study and an earlier Department of Energy study, both of which concluded that there would be no increase in coal production if the Federal royalty rate were lowered. One comment called this omission "intellectually dishonest" and requested that the two studies be made part of the administrative record for the rule.

Response: The Department received and considered several reports and on its own reviewed a variety of other information in the preparation of this final rule, including studies provided with comments, the BLM's own earlier studies, and a report by the Department of Energy. The June 1988 BLM draft study and an earlier January 1988 BLM study on the choice of an underground coal royalty rate as it relates to coal production both provided information used in the final decision on a royalty rate, although neither reached definite conclusions on the question of which royalty rate should apply to underground Federal coal leases. The purpose of citing the June 1988 study in the proposed rule was to articulate a view of the current conditions for underground coal sales in the Western States and thereby to stimulate public comment on the issues relating to the selection of a royalty rate.

The June 1988 study "Review of Issues for Setting Royalty Rates on Federal Underground Coal Leases" (Review) was, as the title implies, a review of issues, not a comprehensive or conclusive study making definitive findings or recommendations. The Review evaluated changes that have occurred in market conditions and expectations for underground Federal coal since the 1979 rule establishing the royalty rate. Specifically, the study examined how changes may have affected the following:

(1) The underground coal industry and its expectations regarding continuation, contraction, or expansion of current mining levels;

(2) The balancing of policy objectives including possible changes in their relative ranking; and

(3) The equitable sharing of rents (profits) between the public and the Federal underground coal lessees.

The line-by-line critique of the June draft study appears to have been premised on a series of misconceptions as to the purpose of the study, the authority under which the Department establishes the underground royalty rate, and the economic principles underlying the mining industry. Specifically, the comment does not recognize that a final decision on an underground royalty rate is ultimately an exercise of policy discretion as provided by law, as it was in 1979 when the existing regulation governing the underground coal royalty rate was promulgated. The comment also seems to be based on several incorrect assumptions concerning the need for the study to provide definite findings, conclusions, and recommendations.

The June 1988 draft study was never intended to serve as the sole basis and rationale for adopting a revision to the current regulation. This report and studies incorporated in the administrative record for this rule address different but valid viewpoints concerning the issues that are determinant in setting an underground coal royalty rate. The decision to set a rate of 8 percent for Federal underground coal leases was made considering the full record including these studies.

The principal author of this final rule is Phillip Perlewitz, Mining Engineer, Division of Solid Mineral Operations, Bureau of Land Management, Washington, DC, with the assistance of the staff of the Division of Solid Mineral Leasing, Bureau of Land Management, the Office of the Solicitor, Department of the Interior, and the staff of the Office of Legislation and Regulatory Management, Bureau of Land Management.

It is hereby determined that this proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Additionally, as required by Executive Order 12630, the Department has determined that the rulemaking would not cause a taking of private property.

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 et seq.

List of Subjects in 43 CFR Part 3470

Coal management provisions and limitations, Lessee qualification requirements, Fees, rentals, and royalties, Bonds, Lease terms.

Under the authority of the Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359), the Multiple Mineral Development Act (30 U.S.C. 521–531), the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.), part 3470, group 3400, subchapter C, chapter II of title 43

of the Code of Federal Regulations is amended as set forth below:

PART 3470—[AMENDED]

1. The authority citation for part 3470 continues to read:

Authority: 30 U.S.C. 181 et seq., and 30 U.S.C. 351–359 and 95 Stat. 1266.

2. Section 3473.3–2 is amended by removing paragraph (a)(1), by redesignating paragraphs (a)(2) through (a)(4) as paragraphs (a)(1) through (a)(3), and by revising redesignated paragraph (a)(2) to read as follows, and by redesignating paragraphs (b) through (d) as (c) through (e) and adding new paragraph (b) to read as follows:

3473.3–2 Royalties.

(a) * * *

(2) A lease shall require payment of a royalty of 8 percent of the value of coal removed from an underground mine.

* * * * *

(b) The royalty rates specified in paragraph (a) of this section shall be applied to new leases at the time of issuance and to previously issued leases at the time of the next scheduled readjustment of the lease.

* * * * *

Dated: December 21, 1989.

James M. Hughes,

Acting Assistant Secretary of the Interior.

[FR Doc. 90–1835 Filed 1–25–90; 8:45 am]

BILLING CODE 3410–05–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NA-620-00-4111-02; Circular No. 2623]

43 CFR Parts 3100, 3140, 3160, 4100, 9180, 9260

Minerals Management; Oil, Gas, and Geothermal Resources Leasing

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: This administrative final rule updates and corrects cross-references to reflect changes made in the oil and gas leasing and other regulations and published in the **Federal Register** since July 22, 1983 (48 FR 33682), when part 3140 was last amended, and corrects a cross-reference error made in the text of the final rule clarifying procedures in the administration of the oil and gas leasing program, published in the **Federal Register** on May 16, 1988 (53 FR 17340). The final rule also updates and consolidates authority citations and removes unnecessary authority citations and confusing and sometimes outdated source citations in parts 3160, 4100, 9180 and 9260.

EFFECTIVE DATE: April 3, 1990.

ADDRESSES: Inquiries or suggestions should be addressed to: Director (140), Bureau of Land Management, Room 5555, Main Interior Building, 1800 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Ted Hudson, (202) 343-8735.

SUPPLEMENTARY INFORMATION: In response to an academic inquiry about a cross-reference in 43 CFR part 3140 to a subpart of the Code of Federal Regulations that is no longer in existence, the Bureau of Land Management reviewed part 3140 and encountered numerous cross-references in that part to provisions of title 43 that had been amended, renumbered, or removed since part 3140 was last revised on May 24, 1982 (47 FR 22478), and then amended in part in 1983, and since subpart 3141 was revised on February 18, 1983 (48 FR 7422). This administrative final rule corrects these obsolete cross-references, which appear solely in subparts 3140 and 3141, and also corrects or removes obsolete references to the Minerals Management Service. Subpart 3142 requires no correction. It also corrects a cross-reference error in subpart 3106 that originated in a final rule originally published in the **Federal Register** on May 16, 1988 (53 FR 17359), updates and corrects typographical and printing errors in the authority citation for part 3160, amends and consolidates the authority citations for parts 4100, 9180, and 9260, and removes unnecessary authority citations from several sections in those three parts.

This rule makes no changes in the substantive or procedural provisions of part 3100 or part 3140. Therefore, in accordance with the provisions of 5 U.S.C. 553, this amendment is published as a final rule with the effective date shown above.

The principal author of this proposed rulemaking is Ted Hudson of the Division of Legislation and Regulatory Management, assisted by the staffs of the Division of Fluid Mineral Leasing and the Division of Solid Mineral Leasing, all of the Bureau of Land Management.

It is hereby determined that this proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined under Executive Order 12291 that this document is not a major rule, and under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) that it will not have a significant economic impact on a substantial number of small entities. Additionally, as required by Executive Order 12630, the Department has determined that the rule would not cause a taking of private property.

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 et seq.

List of Subjects

43 CFR Part 3100

Government contracts, Land Management Bureau, Mineral royalties, Oil and gas exploration, Public lands—mineral resources, Reporting and recordkeeping requirements, Surety bonds.

43 CFR Part 3140

Government contracts, Hydrocarbons, Land Management Bureau, Mineral royalties, Oil and gas exploration, Public lands—mineral resources, Reporting and recordkeeping requirements.

43 CFR Part 3160

Government contracts, Indians—lands, Land Management Bureau, Mineral royalties, Oil and gas exploration, Penalties, Public lands—mineral resources, Reporting and recordkeeping requirements.

43 CFR Part 4100

Administrative practice and procedure, Grazing lands, Land Management Bureau, Livestock, Penalties, Range management, Reporting and recordkeeping requirements.

43 CFR Part 9180

Land Management Bureau, Public lands, Reporting and recordkeeping requirements.

43 CFR Part 9260

Continental shelf, Forest and forest products, Land Management Bureau, Law enforcement, Penalties, Public lands, Range management, Recreation and recreation areas, Wildlife.

Under the authority of 43 U.S.C. 1201, parts 3100, 3140, and 3160, group 3100, subchapter C, part 4100, group 4100, subchapter D, parts 9180, group 9100, and part 9260, group 9200, subchapter I, chapter II of title 43 of the Code of Federal Regulations are amended as set forth below:

PART 3100—OIL AND GAS LEASING

1. The authority citation for part 3100 continues to read as follows:

Authority: Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 *et seq.*), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351-359), the Alaska National Interest Lands Conservation Act, as amended (16 U.S.C. 3101 *et seq.*), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*), the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 *et seq.*), the Act of May 21, 1930 (30 U.S.C. 301-306), the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35), the National Wildlife Refuge Administration Act of 1966 (16 U.S.C. 668dd-ee), the Independent Offices Appropriations Act of 1952 (31 U.S.C. 483a), and the Attorney General's Opinion of April 2, 1941 (40 Op. Atty. Gen. 41).

Subpart 3106—Transfers by Assignment, Sublease or Otherwise

2. The cross-reference in 43 CFR 3106.5 to "§ 3111.2 of this title" is corrected to read "§ 3110.5 of this title".

PART 3140—COMBINED HYDROCARBON LEASING

Subpart 3140—Conversion of Existing Oil and Gas Leases and Valid Claims Based on Mineral Locations

3. The authority citation for subpart 3140 continues to read as follows:

Authority: 30 U.S.C. 181 et seq.

§ 3140.0–5 [Amended]

4. Section 3140.0–5 is amended by removing paragraph (d) and redesignating the subsequent paragraphs (e), (f), and (g) as paragraphs (d), (e), and (f), respectively.

§ 3140.1–3 [Amended]

5. Section 3140.1–3(a) is amended by removing the cross-reference at the end thereof to 43 CFR 3572.1(b) and replacing it with 43 CFR 3592.1, and by removing the word "supervisor" from the two places it appears and replacing it with the words "authorized officer."

§ 3140.1–3 [Amended]

6. Section 3140.1–3(b) is amended by removing the typographically erroneous word "or" and replacing it with the word "of."

§ 3140.1–4 [Amended]

7. Section 3140.1–4(d)(1) is amended by removing the last sentence.

§ 3140.2–2 [Amended]

8. Section 3140.2–2 is revised to read as follows:

§ 3140.2–2 Who may apply.

Only owners of oil and gas leases issued within Special Tar Sands Areas, on or before November 16, 1981, and owners of valid claims based on mineral locations within Special Tar Sands Areas, are eligible to convert leases or claims to combined hydrocarbon leases in Special Tar Sands Areas.

§ 3140.2–3 [Amended]

9. Section 3140.2–3 is amended in paragraph (a) by removing the cross-reference to 43 CFR 3572.1 (b) and (c) and replacing it with 43 CFR 3592.1, in paragraph (b) by removing from the third sentence thereof the cross-reference to 43 CFR 3572.1(c) and replacing it with 43 CFR 3592.1(c), by removing from the fourth sentence the word "supervisor" and replacing it with the words "authorized officer," and by removing from the sixth sentence the word "supervisor" and replacing it with the words "authorized officer," in paragraph (g)(1) by removing the words "the supervisor shall notify" and the words "who" and "then" from the first sentence, and in paragraphs (g) (2), and (3) by removing from the one place it appears in each paragraph the word "supervisor" and replacing it with the words "authorized officer."

§ 3140.3–2 [Amended]

10. Section 3140.3–2 is amended by removing both of the commas and the phrase "with the advise (sic) of the supervisor."

§ 3140.4–1 [Amended]

11. Section 3140.4–1 is amended by removing from the end of paragraph (a) the word "supervisor" and replacing it with the word "authorized officer."

§ 3140.7 [Amended]

12. Section 3140.7 is amended by removing the cross-reference after the first sentence thereof to "§ 3103.4–1 of this title" and replacing it with "43 CFR 3100.0–3(g)(4)".

PART 3141—[AMENDED]

Subpart 3141—Competitive Leasing in Special Tar Sand Areas

13. The authority citation for subpart 3141 continues to read:

Authority: 30 U.S.C. 181 et seq., 351 et seq., 43 U.S.C. 1701 et seq., 95 Stat. 1070.

14. Section 3141.0–8(a) is revised to read as follows:

§ 3141.0–8 Effect of existing regulations.

(a) The following provisions of part 3100 of this title, as they relate to competitive leasing, apply to the issuance and administration of combined hydrocarbon leases issued under this part.

(1) All of subpart 3100, with the exception of § 3100.3–2;

(2) The following sections of subpart 3101: §§ 3101.1–1, 3101.2–1, 3101.2–2, 3101.2–4, 3101.2–5, 3101.7–1, 3101.7–2, and 3101.7–3;

(3) All of subpart 3102;

(4) All of subpart 3103, with the exception of §§ 3103.2–1, those portions of 3103.2–2 dealing with noncompetitive leases, and 3103.3–1 (a), (b), and (c);

(5) All of subpart 3104;

(6) All of subpart 3105;

(7) All of subpart 3106, with the exception of § 3106.1(c);

(8) All of subpart 3107, with the exception of § 3107.7;

(9) All of subpart 3108; and

(10) All of subpart 3109, with special emphasis on § 3109.2(b).

* * * * *

§ 3141.0–8(b) [Amended]

15. Section 3141.0–8(b) is amended by removing the cross-reference to "43 CFR 3572.1" and replacing it with "43 CFR 3592.1."

§ 3141.2–1 [Amended]

16. Section 3141.2–1 is amended by removing the cross-reference to "subpart 3045" and replacing it with "part 3150."

§ 3141.2–2 [Amended]

17. Section 3141.2–2 is amended by removing the cross-reference in paragraph (b)(4) to 43 CFR 3572.1(a) and replacing it with 43 CFR 4392.1(a), and by removing from paragraph (e)(3) the phrase "after consultation with the Mining Supervisor".

§ 3141.4–2(b) [Amended]

18. Section 3141.4–2(b) is amended by removing the cross-reference to "§ 3109.5–2(e)" and replacing it with "§ 3109.2(b)."

19. Section 3141.5–3 is amended by removing from paragraph (b) thereof the cross-reference to "§ 3103.3–7" and replacing it with "§ 3103.4–1," by removing from paragraph (d) the cross-reference to "subpart 3103.3" and replacing it with "§§ 3103.2 and 3103.3," and by revising paragraph (a) to read as follows:

§ 3141.5–3 Royalties and rentals.

(a) The royalty rate on all combined hydrocarbon leases is 12½ percent of the value of production removed or sold from a lease. The Minerals Management Service shall be responsible for collecting and administering royalties.

* * * * *

20. Section 3141.6–2 is amended by revising the beginning of the third sentence to read as follows:

§ 3141.6–2 Publication of a notice of competitive lease offering.

* * * The notice shall specify the time and place of sale, * * *.

21. Section 3141.6–7 is revised to read as follows:

§ 3141.6–7 Consideration of next highest bid.

The Department reserves the right to accept the next highest bid if the highest bid is rejected. In no event shall an offer be made to the next highest bidder if the difference between his/her bid and that of the rejected successful bidder is greater than the one-fifth bonus forfeited by the rejected successful bidder.

PART 3160—ONSHORE OIL AND GAS OPERATIONS

22. The authority citation for part 3160 is revised to read as follows:

Authority: The Mineral Leasing Act, as amended and supplemented (30 U.S.C. 181 et seq.); the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359); the Act of May 31, 1930 (30 U.S.C. 301–306); the Act of March 3, 1909, as amended (25 U.S.C. 396); the Act of May 11, 1938, as amended (25 U.S.C. 396a–396q); the Act of February 28, 1891, as amended (25 U.S.C. 397); the Act of May 29, 1924 (25 U.S.C. 398); the Act of March 3, 1927 (25 U.S.C. 398a–398e); the Act of June 30, 1919, as amended (25 U.S.C. 399); R.S. 441 (43 U.S.C. 1457); Attorney General's Opinion of April 2, 1941 (40 Op.Atty.Gen. 41); the Federal Property

and Administrative Services Act of 1949, as amended (40 U.S.C. 471 et seq.); the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4331 et seq.); the Act of December 12, 1980 (42 U.S.C. 6508); the Combined Hydrocarbon Leasing Act of 1981 (95 Stat. 1070); the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 et seq.); and the Indian Mineral Development Act of 1982 (25 U.S.C. 2102 et seq.).

PART 4100—GRAZING ADMINISTRATION—EXCLUSIVE OF ALASKA

23. The authority citation for part 4100 is revised to read as follows:

Authority: 43 U.S.C. 315, 315a–315r, 43 U.S.C. 1701 et seq., 43 U.S.C. 1901 et seq., 43 U.S.C. 1181d.

24. Part 4100 is amended by removing the parenthetical authority citations that are found at the end of §§ 4100.0–1, 4100.0–2, 4100.0–3, 4100.0–5, 4110.1, 4110.1–1, 4110.2–1, 4110.2–3, 4110.3–3, 4110.4–2, 4110.5, 4120.3, 4120.3–1, 4120.3–2, 4120.3–3, 4120.3–4, 4120.3–6, 4120.3–7, 4120.4, 4130.1, 4130.1–1, 4130.1–2, 4130.2, 4130.3, 4130.4, 4130.4–1, 4130.5, 4130.6, 4130.6–1, 4130.6–2, 4130.6–3, 4130.7, 4130.7–1, 4130.7–2, 4130.7–3, 4130.8, 4140.1, 4150.2, 4150.3, 4150.4–1, 4150.4–2, 4150.4–3, 4160.1–1, 4160.1–2, 4160.2, 4160.3, 4160.4, and 4170.1–2.

PART 9180—CADASTRAL SURVEY

25. The authority citation for part 9180 is revised to read as follows:

Authority: R.S. 2478; 43 U.S.C. 1201; 40 Stat. 965, as amended; 43 U.S.C. 773.

§§ 9180.0–3, 9185.1–2, 9185.4–1, 9185.4–2, and 9185.4–3 [Amended]

26. Part 9180 is amended by removing the parenthetical authority citations that are found at the end of §§ 9180.0–3, 9185.1–2, 9185.4–1, 9185.4–2, and 9185.4–3.

PART 9260—LAW ENFORCEMENT—CRIMINAL

27. The authority citation for part 9260 continues to read as folows:

Authority: 16 U.S.C. 433; 16 U.S.C. 4601–6a; 16 U.S.C. 670g–n; 16 U.S.C. 1241–1249; 16 U.S.C. 1331 et seq.; 18 U.S.C. 3401; 18 U.S.C. 1851–1853; 43 U.S.C. 315 et seq.; 43 U.S.C. 315(a); 43 U.S.C. 1061–1064; 43 U.S.C. 1334; 43 U.S.C. 1701 et seq.; 43 U.S.C. 1733.

§§ 9264.1, 9264.7, 9265.5, 9266.4, 9268.0–3, 9268.3, 9269.0–3, 9269.3–3, 9269.3–4, and 9269.3–5 [Amended]

28. Part 9260 is amended by removing the parenthetical citations appearing at the end of § § 9264.1(k) (1) and (2); 9264.7; 9265.5 (a), (b), (c), (d) (1) and (2); 9266.4 (a) and (b); 9268.0–3; 9268.3(a), (d)(2)(ix), (a)(3)(iv)(B), and (a)(4), (c)(1)(ii), (c)(3), (d)(1)(vi), (d)(2), (e)(1); 9269.0–3(b)(3); 9269.3–3(d), (d)(2)(iii); 9269.3–4(a)(1), (b) (1) and (2), (c) (1) and (2); and 9269.3–5(b)(1)(iii).

Dated: March 22, 1990.

James M. Hughes,

Deputy Assistant Secretary of the Interior.

[FR Doc. 90–7523 Filed 4–2–90; 8:45 am]

BILLING CODE 4310–84–M

43 CFR Public Land Order 6772

[CA–943–00–4214–10; CACA–17454]

Withdrawal of Public Land for Indian Valley Reservoir Campground; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws 15 acres of public land from surface entry and mining for a period of 20 years for the Bureau of Land Management to protect the group campground at Indian Valley Reservoir. The land has been and remains open to mineral leasing.

EFFECTIVE DATE: April 3, 1990.

FOR FURTHER INFORMATION CONTACT: Viola Andrade, BLM California State Office, room E–2845, Federal Office Building, 2800 Cottage Way, Sacramento, California 95825, 916–978–4820.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following described public land is hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. ch. 2), but not from leasing under the mineral leasing laws, to protect the group campground at Indian Valley Reservoir:

Mount Diablo Meridian

T. 14 N., R. 6 W.,
Sec. 5, S½NE¼SW¼NE¼ and SE¼SW¼NE¼.
The area described contains 15 acres in Lake County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be extended.

Dated: March 26, 1990.

Dave O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 90–7524 Filed 4–2–90; 8:45 am]

BILLING CODE 4310–40–M

LEGAL SERVICES CORPORATION

45 CFR Part 1611

Eligibility: Income Level for Individuals Eligible for Assistance

AGENCY: Legal Services Corporation.

ACTION: Final rule; revised appendix.

SUMMARY: The Legal Services Corporation is required by law to establish maximum income levels for individuals eligible for legal assistance. This document updates the specified income levels to reflect the annual amendments to the official Federal Poverty Income Guidelines as defined by the Department of Health and Human Services.

EFFECTIVE DATE: April 3, 1990.

FOR FURTHER INFORMATION CONTACT: Timothy B. Shea, General Counsel, Legal Services Corporation, 400 Virginia Avenue, SW., Washington, DC 20024–2571; 202–863–1823.

SUPPLEMENTARY INFORMATION: Section 1007(a)(2) of the Legal Services Corporation Act, 42 U.S.C. 2996f(a)(2), requires the Corporation to establish maximum income levels for individuals eligible for legal assistance, and the Act provides that other specified factors shall be taken into account along with income.

Section 1611.3(b) of the Corporation's regulations establishes a maximum income level equivalent to one hundred and twenty-five percent (125%) of the official Federal Poverty Income Guidelines as defined by the Office of Management and Budget. Responsibility for revision of the official Federal Poverty Income Guidelines was shifted in 1982 from the Office of Management and Budget to the Department of Health and Human Services. The revised figures for 1990 equivalent to 125% of the current official Poverty Income Guidelines as set out at 55 FR 5664 (Feb. 16, 1990) are set forth below:

List of Subjects in 45 CFR Part 1611

Legal services.

IT 2624

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3830

[AA-680-00-4310; Circular No. 2625]

Location of Mining Claims

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: This administrative final rule amends various cross-references in the regulations contained in 43 CFR part 3830 in order to correct outdated and erroneous citations.

EFFECTIVE DATE: April 27, 1990.

ADDRESSES: Inquiries or suggestions should be addressed to: Director (680), Bureau of Land Management, Room 3538, Main Interior Building, 1800 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Reed Smith (202) 343-8537

SUPPLEMENTARY INFORMATION: This final rule amends 43 CFR part 3830 by updating several cross-references that were made obsolete by the regulations published in the Federal Register on December 2, 1988 (53 FR 48876), and to correct printing or typographical errors made in the same rulemaking. The present rule makes no changes in the substantive or procedural provisions of part 3830. Therefore, in accordance with the provisions of 5 U.S.C. 533, this amendment is published as a final rule with the effective date shown above.

The principal author of this final rule is Stephanie Hargrove of the Division of Mining Law and Salable Minerals, assisted by the staff of the Division of Legislation and Regulatory Management, Bureau of Land Management, Washington Office.

It has been determined that this final rule does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq*.). Additionally, as required by Executive Order 12630, the Department has determined that the rule would not cause a taking of private property.

This final rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq*.

List of Subjects in 43 CFR Part 3830

Mineral royalties, Mines, Public-mineral resources, Reporting and recordkeeping requirements.

Under the authorities cited below, part 3830, group 3800, subchapter C, chapter II of title 43 of the Code of Federal Regulations is amended as set forth below:

PART 3830—LOCATION OF MINING CLAIMS

1. The authority citation for part 3830 continues to read as follows:

Authority: 30 U.S.C. 22, sections 2319 and 2478 of the Revised Statutes, as amended (43 U.S.C. 1201), 31 U.S.C. 9701, 16 U.S.C. 1901, 1907, and 43 U.S.C. 1743, 1740 1744, and 1782.

Subpart 3833—Recordation of Mining Claims and Filing Proof of Annual Assessment Work or Notice of Intention To Hold Mining Claims, Mill or Tunnel Sites

§ 3833.0-5 [Amended]

2. Section 3833.0-5(k) is amended by removing the citation "§ 3833.2-3"and replacing it with "§ 3833.2-5".

§ 3833.0-5 [Amended]

3. Section 3833.0-5(l) is amended by removing the citation "§ 3833.2-3"and replacing it with "§ 3833.2-5".

§ 3833.0-5 [Amended]

4. Section 3833.0-5(m) is amended by removing the citation "§ 3833.2-1"and replacing it with "§ 3833.2".

§ 3833.1-2 [Amended]

5. Section 3833.1-2(b) introductory text is amended by revising the phrase paragraphs (a) and (b)" to read "paragraph (a)".

§ 3833.2-6 [Amended]

6. Section 3833.2-6 is amended by removing the citation "§ 3833.2-1"and replacing it with "§ 3833.2".

§ 3833.3 [Amended]

7. Section 3833.3(a) is amended by removing the citation "§ 3833.1-2" and replacing it with "§ 3833.1".

§ 3833.4 [Amended]

8. Section 3833.4(a) is amended by removing the citations "§§ 3833.1-2(a), and 3833.2-1" and replacing them with "§§ 3833.1-2(a), 3833.2-1, and 3833.2-2".

§ 3833.4 [Amended]

9. Section 3833.4(b) is amended by removing the citations "§ 3833.2-4(a) and (b), and 3833.2-5(a) and (b)" and replacing them with "§§ 3833.1-2(b) and 3833.2-5(c)".

§ 3833.4 [Amended]

10. Section 3833.4(d) is amended by removing the citation "§ 3833.2-1"and replacing it with "§§ 3833.1, 3833.2-1, and 3833.2-2".

§ 3833.5 [Amended]

11. Section 3833.5(c) is amended by removing the citation "§ 3833.2-1(b)"and replacing it with" § 3833.2".

Dated: April 20, 1990.

James M. Hughes,

Acting Assistant Secretary of the Interior.

[FR Doc. 90-9843 Filed 4-26-90; 8:45 am]

BILLING CODE 4310-84-M

43 CFR Part 5440

RIN 1004-AB39

[AA-230-00-6310-02; Circ. No. 2624]

Conduct of Sales

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: This final rule will amend provisions of the existing regulations in 43 CFR part 5440, Conduct of Sales. The Department of the Interior has determined that it is necessary to amend the existing regulations concerning the resale of timber from uncompleted contracts to allow the original purchaser to participate in the resale only under certain circumstances and conditions.

EFFECTIVE DATE: May 29, 1990.

FOR FURTHER INFORMATION CONTACT: Richard Bird, (202) 653-8864.

SUPPLEMENTARY INFORMATION: The Department of the Interior has determined that the existing regulations on the resale of timber from uncompleted contracts are inadequate. Under existing regulations, purchasers of sales that subsequently are not completely performed may bid on the resale of any timber remaining on the contract area provided that all of the timber has been felled and paid for. When the remaining timber is resold, the original purchaser receives a refund in an amount equal to the resale bid rates or the original contract rates per species, whichever is less, in accordance with the provisions of the timber sale contract. The administrative costs of resale are deducted from any amount

due to the purchaser. If the new purchaser happens also to have been the original purchaser, the purchaser effectively receives an extension of time to complete the contract with minimal financial penalty.

A proposed rule was published in the Federal Register on July 28, 1989 (54 FR 31347). One comment letter was received on the proposed rule from an industry association. The letter agreed with the concept of encouraging timely completion of timber sale contracts and considered this rule a positive step in that direction. The letter also contained two specific comments and a suggested addition to the rule.

The first comment was that § 5442.2(a)(2) was unclear as proposed, because it did not specify what a purchaser must have paid for, or that the payment is required to be in full. This comment has merit and wording similar to that suggested in the comment is adopted in the final rule to make it clear that the purchaser is required to make full payment of the contract amount and all related charges.

The second comment expressed concern that a purchaser's capital could be held for inordinate amounts of time when sales were not re-advertised in a timely fashion. It suggested adding a provision for payment of interest to the purchaser if the timber remaining on the uncompleted contract was not re-advertised within sixty days. The BLM agrees that remaining timber from uncompleted contracts should be sold in a timely manner and it is BLM policy to sell this timber as soon as practical, but at times the remaining timber is included with other timber that was not in the original sale in order to make a more logical timber sale. This can cause delays in advertising the sale. The suggestion that the Government pay interest on moneys held under this provision is not adopted because such a change would defeat the goal of encouraging timely performance of both the original sale contract and the resale contract. Under the existing regulation a purchaser's capital is held until the timber is resold in order to determine the amount of damages due to the government. The only effect of this rule change is that when a purchaser is the successful bidder for timber remaining from an uncompleted contract that was originally held by that purchaser, the amount of the refund due to the purchaser is held as credit toward the purchase price of the new timber sale contract. This credit will be used to satisfy the required cash deposit and any excess will be used as credit toward subsequent payments. This payment will encourage timely performance and reduce the risk to the government.

The objective of this rule is to encourage timely performance of original contracts and prompt performance of resale contracts in order to promote a more orderly forest management process and revenue flow.

The principal author of this final rule is Richard Bird, Division of Forestry, assisted by the staff of the Division of Legislation and Regulatory Management, Bureau of Land Management.

It is hereby determined that this final rule does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Additionally, as required by Executive Order 12630, the Department has determined that the rule will not cause a taking of private property.

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 et seq.

List of Subjects in 43 CFR Part 5440

Forest and forest products, Conduct of sales, Government contracts, Public lands.

Under the authority of section 5 of the Act of August 28, 1937 (43 U.S.C. 1181e), and the Act of July 31, 1947, as amended (30 U.S.C. 601 et seq.), chapter II of title 43 of the Code of Federal Regulations is amended as set forth below:

Dated: February 28, 1990.

Dave O'Neal,

Assistant Secretary of the Interior.

PART 5440—[AMENDED]

1. The authority citation for part 5440 continues to read as follows:

Authority: Sec. 5, 50 Stat. 875; 61 Stat. 681, as amended; 69 Stat. 367; 43 U.S.C. 1181e; 30 U.S.C. 601 *et seq.*

2. Section 5442.2 is revised to read as follows:

§ 5442.2 Resale of timber from uncompleted contract.

(a) This section applies to the sale of timber only when 50 percent or more of the timber included in the sale is timber remaining from an uncompleted contract. A bid from a purchaser who held the uncompleted contract, or an affiliate of such purchaser, will be considered only if:

(1) The contract was not canceled because of breach by the purchaser, and

(2) The purchaser has made full payment of the total purchase price and any related charges by the expiration date.

(b) The purchaser who held the uncompleted contract, or affiliate of such purchaser, shall, upon execution of the resale contract, agree that the Bureau of Land Management shall retain the original payment for timber not removed under the uncompleted contract, less the cost of resale, as a credit toward the purchase price of the resale contract.

[FR Doc. 90-9799 Filed 4-26-90; 8:45 am]

BILLING CODE 4310-84-M

43 CFR Public Land Order 6778

[AK-932-00-4214-10; F-012027]

Partial Revocation of Public Land Order No. 1396 and Public Land Order No. 5187; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes two public land orders insofar as they affect 0.66 acre of public land withdrawn for the Department of the Air Force for a military reserve. The lands are no longer needed for the purpose for which they were withdrawn. The lands are part of the Yukon Flats National Wildlife Refuge as established by the Alaska National Interest Lands Conservation Act, 94 Stat. 2371. The lands will remain withdrawn from all forms of appropriation and disposition under the public land laws, including the mining laws. The lands are unavailable for mineral leasing as they are located within an incorporated city (30 U.S.C. 181 (1982)).

EFFECTIVE DATE: April 27, 1990.

FOR FURTHER INFORMATION CONTACT: Sandra C. Thomas, BLM Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513-7599, 907-271-5477.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2743, 2751; 43 U.S.C. 1714 (1982), and by

#F 2625

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3830

[AA-680-00-4310; Circular No. 2625]

Location of Mining Claims

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: This administrative final rule amends various cross-references in the regulations contained in 43 CFR part 3830 in order to correct outdated and erroneous citations.

EFFECTIVE DATE: April 27, 1990.

ADDRESSES: Inquiries or suggestions should be addressed to: Director (680), Bureau of Land Management, Room 3538, Main Interior Building, 1800 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Reed Smith (202) 343-8537

SUPPLEMENTARY INFORMATION: This final rule amends 43 CFR part 3830 by updating several cross-references that were made obsolete by the regulations published in the **Federal Register** on December 2, 1988 (53 FR 48876), and to correct printing or typographical errors made in the same rulemaking. The present rule makes no changes in the substantive or procedural provisions of part 3830. Therefore, in accordance with the provisions of 5 U.S.C. 533, this amendment is published as a final rule with the effective date shown above.

The principal author of this final rule is Stephanie Hargrove of the Division of Mining Law and Salable Minerals, assisted by the staff of the Division of Legislation and Regulatory Management, Bureau of Land Management, Washington Office.

It has been determined that this final rule does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq* .). Additionally, as required by Executive Order 12630, the Department has determined that the rule would not cause a taking of private property.

This final rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq*.

List of Subjects in 43 CFR Part 3830

Mineral royalties, Mines, Public-mineral resources, Reporting and recordkeeping requirements.

Under the authorities cited below, part 3830, group 3800, subchapter C, chapter II of title 43 of the Code of Federal Regulations is amended as set forth below:

PART 3830—LOCATION OF MINING CLAIMS

1. The authority citation for part 3830 continues to read as follows:

Authority: 30 U.S.C. 22, sections 2319 and 2478 of the Revised Statutes, as amended (43 U.S.C. 1201), 31 U.S.C. 9701, 16 U.S.C. 1901, 1907, and 43 U.S.C. 1743, 1740 1744, and 1782.

Subpart 3833—Recordation of Mining Claims and Filing Proof of Annual Assessment Work or Notice of Intention To Hold Mining Claims, Mill or Tunnel Sites

§ 3833.0-5 [Amended]

2. Section 3833.0-5(k) is amended by removing the citation "§ 3833.2-3"and replacing it with "§ 3833.2-5".

§ 3833.0-5 [Amended]

3. Section 3833.0-5(l) is amended by removing the citation "§ 3833.2-3"and replacing it with "§ 3833.2-5".

§ 3833.0-5 [Amended]

4. Section 3833.0-5(m) is amended by removing the citation "§ 3833.2-1"and replacing it with "§ 3833.2".

§ 3833.1-2 [Amended]

5. Section 3833.1-2(b) introductory text is amended by revising the phrase paragraphs (a) and (b)" to read "paragraph (a)".

§ 3833.2-6 [Amended]

6. Section 3833.2-6 is amended by removing the citation "§ 3833.2-1"and replacing it with "§ 3833.2".

§ 3833.3 [Amended]

7. Section 3833.3(a) is amended by removing the citation "§ 3833.1-2" and replacing it with "§ 3833.1".

§ 3833.4 [Amended]

8. Section 3833.4(a) is amended by removing the citations "§§ 3833.1-2(a), and 3833.2-1" and replacing them with "§§ 3833.1-2(a), 3833.2-1, and 3833.2-2".

§ 3833.4 [Amended]

9. Section 3833.4(b) is amended by removing the citations "§ 3833.2-4(a) and (b), and 3833.2-5(a) and (b)" and replacing them with "§§ 3833.1-2(b) and 3833.2-5(c)".

§ 3833.4 [Amended]

10. Section 3833.4(d) is amended by removing the citation "§ 3833.2-1"and replacing it with "§§ 3833.1, 3833.2-1, and 3833.2-2".

§ 3833.5 [Amended]

11. Section 3833.5(c) is amended by removing the citation "§ 3833.2-1(b)"and replacing it with" § 3833.2".

Dated: April 20, 1990.

James M. Hughes,

Acting Assistant Secretary of the Interior.

[FR Doc. 90-9843 Filed 4-26-90; 8:45 am]

BILLING CODE 4310-84-M

---

43 CFR Part 5440

RIN 1004-AB39

[AA-230-00-6310-02; Circ. No. 2624]

Conduct of Sales

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: This final rule will amend provisions of the existing regulations in 43 CFR part 5440, Conduct of Sales. The Department of the Interior has determined that it is necessary to amend the existing regulations concerning the resale of timber from uncompleted contracts to allow the original purchaser to participate in the resale only under certain circumstances and conditions.

EFFECTIVE DATE: May 29, 1990.

FOR FURTHER INFORMATION CONTACT: Richard Bird, (202) 653-8864.

SUPPLEMENTARY INFORMATION: The Department of the Interior has determined that the existing regulations on the resale of timber from uncompleted contracts are inadequate. Under existing regulations, purchasers of sales that subsequently are not completely performed may bid on the resale of any timber remaining on the contract area provided that all of the timber has been felled and paid for. When the remaining timber is resold, the original purchaser receives a refund in an amount equal to the resale bid rates or the original contract rates per species, whichever is less, in accordance with the provisions of the timber sale contract. The administrative costs of resale are deducted from any amount

#2626-

(1) The proposed emission limits contained in OAC Rule 3745–73–03 are based on 24-hour averaging, while the Federal emission guidelines are based on 12-hour averaging. Under 40 CFR 60.24, a State may apply a less stringent requirement if sufficient justification is demonstrated. Such justification may include unreasonable control cost and physical limitation. Because Ohio has not made such a demonstration, the proposed limits are not approvable.

(2) OAC Rule 3745–73–03(C) is a "bubble" alternative control plan. It would allow a 111(d) source to establish an alternative emission limit which is different from the emission limit established in the 111(d) plan, in order to comply with the applicable standard. Because, if approved, Ohio's 111(d) plan would be the federally-approved standard by which to define compliance, only a revision to the plan (approved by USEPA) could change the terms. Additionally, USEPA does not have a bubble policy applicable to 111(d) plans.

(3) The plan does not contain monitoring requirements to ensure proper operation and maintenance of the affected facility. The regulations at 40 CFR 60.25(b) require that the 111(d) plan shall provide for monitoring the status of compliance with the applicable standard.

For a more detailed discussion of USEPA's rationale for disapproving the Ohio 111(d) plan, see the proposed rulemaking notice. The Ohio Environmental Protection Agency (OEPA) commented on the proposed disapproval. OEPA's comments, followed by USEPA's responses are set forth below:

Public Comments and USEPA's Responses

(1) *OEPA Comment.* Lengthy delays by USEPA in taking action on the Ohio 111(d) plan for TRS have contributed to the disapproval of the 111(d) plan. A timely and final review would have resulted in an effective plan in place by this time. Due to changing Federal review and interpretation, USEPA now cites new deficiencies which have prevented the approval of this plan.

USEPA Response. USEPA informed the State of the new deficiencies long before the notice of proposed disapproval was published in the Federal Register. The intention of USEPA was to resolve the new deficiencies in order to be able to approve the plan. USEPA requested that the State revise its rule to address the deficiencies and submit a final revised rule. The State has not corrected the deficiencies.

(2) *OEPA Comment.* USEPA's considerable delay in processing the TRS Plan is not consistent with Section 110 of the Clean Air Act which requires that SIPs be processed in 4 months. These delays have contributed to the continued emissions of TRS from the affected sources. OEPA recommends that USEPA approve the TRS Plan as submitted to USEPA.

USEPA Response. Regardless of the time USEPA took to act upon Ohio's submittal, USEPA cannot approve the 111(d) Plan as submitted, unless it meets the requirements of the Clean Air Act, i.e., the deficiencies cited in the notice of proposed rulemaking are corrected. While failure to act may affect the ability to enforce certain provisions until final Agency action, failure to act does not affect the approvability of the action.

Final Action. USEPA is disapproving Ohio's 111(d) plan for TRS from existing Kraft Pulp Mills because the State has not corrected the SIP submittal deficiencies cited in the notice of proposed rulemaking.

Pursuant to the provisions of 5 U.S.C. 605(b), I certify that this action will not have a significant economic impact on a substantial number of small entities.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State Implementation Plan. Each request for a revision to the State Implementation Plan shall be considered separately in the context of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225).

On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of 2 years.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 13, 1990. This action may not be challenged later in proceedings to enforce its requirements. See section 307(b)(2).

List of Subjects in 40 CFR Part 62

Administrative practice and procedure, Air pollution control, Paper and paper products industry, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: May 3, 1990.

Todd A. Cayer,

Acting Regional Administrator.

PART 62—APPROVAL AND PROMULGATION OF STATE PLANS FOR DESIGNATED FACILITIES AND POLLUTANTS

Subpart KK—Ohio

Title 40 of the Code of Federal Regulations, chapter I, part 62, is amended as follows:

1. The authority citation for part 62 continues to read as follows:

Authority: Secs. 111 and 301(a), Clean Air Act, as amended (42 U.S.C. 7413 and 7601), unless otherwise noted.

2. Subpart KK is amended by adding an undesignated center heading and § 62.8860 to read as follows:

Subpart KK—Ohio

* * * * *

Total Reduced Sulfur Emissions From Kraft Pulp Mills

§ 62.8860 Identification of Plan.—Disapproval.

On December 7, 1984, and April 23, 1986, Ohio submitted its plan for controlling total reduced sulfur from existing kraft pulp mills, including Rules 3745–73–01, 02, 03, and 04. The plan is being disapproved because:

(a) The requirements of § 60.24(f) of this chapter are not met because the State failed to justify the application of emission standards less stringent then the Federal emission standards. Additionally, USEPA does not have a bubble policy applicable to 111(d) plans.

(b) The plan does not contain monitoring requirements to ensure proper operation and maintenance of the affected facility as required by § 60.25(b) of this chapter.

[FR Doc. 90–11173 Filed 5–11–90; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 5450 and 5460

RIN 1004–AB40

[AA–230–08–6310–02; Circ. No. 2626]

Award of Contracts; General Sales Administration; General

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: This final rule amends provisions of the existing regulations in 43 CFR part 5450—Award of Contract; [illegible]eral, and part 5460—Sales [illegible]inistration. The Department of the [illegible]or has determined that it is necessary to amend existing regulations concerning timber sale contract performance bonds and payments to encourage responsible bidding at such a rate that the bidder, if awarded the contract, would be more able to perform the obligations under the contract.

EFFECTIVE DATE: July 13, 1990.

FOR FURTHER INFORMATION CONTACT: Richard Bird, (202) 653–8864.

SUPPLEMENTARY INFORMATION: The Federal Timber Contract Payment Modification Act of October 16, 1984 (16 U.S.C. 618 *et seq.*) requires the Secretary of the Interior to take action to encourage responsible bidding. Bidding is considered responsible if it is at such a level that the bidder, if awarded the contract, would be able to perform the obligations required by its provisions. Further, the Act requires the Secretary to take action to reduce speculative bidding. In practice, the major action taken by the Secretary to address speculative bidding has been greater use of short-term contracts. Bids on short-term contracts reflect the current value of timber. Bidders on long-term [illegible]racts are more at the mercy of [illegible]ticipated unfavorable market [illegible]itions that are the bane of speculators than are bidders on short-term contracts. Contracts bid since the 1984 Act are being completed on a timely basis.

Timber markets have improved with no commensurate increase in available timber, generating speculation. In response to this, a proposed rule was published on February 29, 1988, Federal Register (53 FR 6013). This rulemaking was designed to dampen speculative bidding and encourage the completion of future timber contracts by requiring an increase in the minimum performance bond for timber sale contracts having a bid ratio exceeding 1.25. The bid ratio is the quotient of the total bid price divided by the total appraised price, expressed as a decimal. The rule also proposed removing the $500,000 cap on performance bonds and removing personal surety as a type of acceptable performance bond.

The comments received on this proposed rule convinced the Department of the Interior that the proposed rule required revision, and a new proposed rule was published in the July 12, 1989, [illegible]eral Register (54 FR 29357). This rule [illegible]designed to use early performance [illegible]ntives to discourage speculative bidding. In addition, personal surety would be retained as a type of acceptable performance bond.

The elements of the new proposed rulemaking were as follows: (1) It provided for increasing the cash deposit to one installment (10 percent of purchase price or $50,000, whichever is less). It provided for holding one-half of the deposit to apply to the final payment and releasing one-half of the deposit as specified in item (4) below. (2) It provided for payment of 20 percent of the total purchase price on the first anniversary of contracts 19 months in length or longer. The payment would be reduced by the value of completed road construction required by the contract. (3) It provided for payment of 40 percent of the total purchase price on the second anniversary of contracts 27 months in length or longer. This payment could also be reduced by the value of completed road construction. (4) It provided for permitting a 50 percent reduction in the performance bond when 60 percent of the total purchase price has been reached through contract payments plus the value of completed road construction. In addition, it provided that at this 60 percent payment point, the aforementioned one-half of the cash deposit would be released and applied as a credit against subsequent payments.

Comments on this revised proposed rule were received from two forest industry associations and one forest industry corporation. All of the comments supported the goal of reducing speculative bidding.

One comment expressed concern that short-term contracts, cash deposits and periodic payments all contribute to low volume under contract, and low volume under contract contributes to "forced" bidding in which purchasers are forced to pay higher stumpage prices to keep their operations running. The Department of the Interior does not believe that this rule will cause a significant change in the amount of timber under contract. The maximum contract length for Bureau of Land Management timber sale contracts is three years so that any additional incentives for harvesting have to be applied to the 1st and 2nd years of the contract. Most of the timber sales that are over 19 months in length would have some road construction required. Therefore, some work would be started in the first year, and the 20 percent payment on the first anniversary will not be a hardship to a prudent purchaser that intends to harvest the sale in an orderly manner. Any increase in the length of timber sale contracts is beyond the scope of this rulemaking, and would not serve the goal of discouraging speculative bidding.

One comment suggested that incentives to harvest timber should be aimed at encouraging harvest during the 2nd and 3rd year rather than the 1st and 2nd year, and that, therefore, periodic payments should be applicable on the 2nd and 3rd anniversary or 3rd and 4th anniversary when road construction is necessary. The comment cannot be adopted in the final rule. The maximum contract length for BLM timber sales is 3 years, so any incentives for early harvest have to be available in the first or second year.

Another comment suggested that the performance bond should be reduced when 50 percent of the total purchase price has been reached instead of 60 percent. Due to the $500,000 limit on the performance bond and the modest amount of the periodic payments required, the Department has determined that the 60 percent completion requirement is not unreasonable, and the comment is not adopted in the final rule.

One comment suggested that the cash deposit should not be limited to $50,000 because most timber sales in Western Oregon exceed $500,000 in value, and with the cap on the cash deposit there is not much of a braking effect on the bidding for these sales. Removing the cap of $50,000 from the cash deposit required would create a hardship for the small purchasers and might cause a decline in purchases by small business. Also, $50,000 is double the amount required by existing regulations, and represents an increase in earnest money sufficient to discourage speculative bidding.

Another comment suggested that the periodic payments should be increased to 33 percent on the first anniversary and 67 percent on the second anniversary. One comment agreed with the anniversary payment dates and their amounts, as well as the deposit criteria, and found the performance bond reduction and completion criteria to be fair and equitable. Increasing the percentage of the first and second anniversary payments would have an unfavorable effect on small businesses. The rule will minimize specification, and there is no need to increase the cash deposit or periodic payments any higher to the disadvantage of small businesses.

A comment suggested that the language concerning the valuation of road construction completion could be improved to indicate that partial completion of road projects to reasonable and easily determined points shall be accepted. The Department of

the Interior agrees with the comment that the language concerning valuation of road construction completed should be clarified and the final rule includes this change.

The final rule amends § 5451.2 to require the first installment to be paid upon or before approval of the contract by the authorized officer. This editorial change is made merely to conform this section to section 5461(a)(2), which requires payment of the first installment before or at the time the contract is approved by the authorized officer of the Bureau of Land Management.

The elements of the final rule are as follows: (1) It increases the cash deposit to one installment (10 percent of the purchase price of $50,000, whichever is less). It requires one-half of the deposit to be held to apply to the final payment and provides for the release of one-half of the deposit as specified in item (4) below. (2) It requires payment of 20 percent of the total purchase price on the first anniversary of contracts 19 months in length or longer. The payment will be reduced by the value of completed road construction. (3) It will require payment of 40 percent of the total purchase price on the second anniversary of contracts 27 months in length or longer. The payment will be reduced by the value of completed road construction. (4) It will permit a 50 percent reduction in the performance bond when 60 percent of the total purchase price has been reached through contract payments plus the value of completed road construction. In addition, the aforementioned one-half of the cash deposit will be released and applied as a credit against subsequent payments.

Editorial changes have also been made to improve clarity.

The principal author of the final rulemaking is Richard Bird, Division of Forestry, assisted by the staff of the Division of Legislation and Regulatory Management, Bureau of Land Management.

It is hereby determined that this final rulemaking does not constitute a major Federal action significantly affecting the qualify of the human environment, and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined under Executive Order 12291 that this document is not a major rule, and under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that it will not have a significant economic impact on a substantial number of small entities. Additionally, as required by Executive Order 12630, the Department has determined that the rulemaking would not cause a taking of private property.

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

List of Subjects

43 CFR Part 5450

Forests and forest products, Government contracts, Land Management Bureau, Public lands, Reporting and recordkeeping requirements, Surety bonds.

43 CFR Part 5460

Forests and forest products, Government contracts, Land Management Bureau, Public lands.

Under authority of section 5 of the Act of August 28, 1937 (43 U.S.C. 1181e), and the Act of July 31, 1947, as amended (30 U.S.C. 601 et seq.), parts 5450 and 5460, group 5400, subchapter E, chapter II, subtitle B of title 43 of the Code of Federal Regulations are amended as set forth below.

Dated: March 2, 1990.

Dave O'Neal,

Assistant Secretary of the Interior.

PART 5450—[AMENDED]

1. The authority citation for part 5450 is revised to read as follows:

Authority: 30 U.S.C. 601 *et seq.*; 43 U.S.C. 1181e.

2. Section 5451.2 is amended by revising paragraph (a) to read as follows:

§ 5451.2 Performance bonds in excess of minimum.

(a) The purchaser may cut timber before payment of the second or subsequent installments required by § 5461.2(a) of this part by increasing the minimum bond required by § 5451.1(a) of this part by an amount equal to one or more installment payments; *Provided, however,* That the authorized officer may grant permission to cut timber only when the value of the timber to be cut does not exceed the amount by which the minimum bond has been increased. The purchaser shall secure approval in writing of the adjusted bond by the authorized officer prior to cutting any timber under the adjusted bond.

* * * * *

3. Section 5451.3 is revised to read as follows:

§ 5451.3 Performance bond reduction.

(a) As contract provisions are satisfactorily completed, the authorized officer may, in his discretion, reduce the amount of the required performance bond: *Provided, however,* That the amount of the performance bond shall not be reduced below the minimum required by § 5451.1 until

(1) Payment of no less than 60 percent of the total purchase price has been made, or

(2) Road construction required under the contract has been completed, the value of which when combined with contract payments is equal to no less than 60 percent of the total purchase price.

(b) At the request of the purchaser, when the requirements set forth in the proviso to paragraph (a) of this section have been met, the amount of the performance bond may be reduced to 10 percent of the total purchase price or the entire cost of the uncompleted post-harvest contract requirements, whichever is greater. The amount of the performance bond shall not be reduced below 10 percent of the total purchase price until payment for all the timber sold under the terms of the contract is complete.

(c) For the purpose of this section, the value of completed road construction shall be based on the Bureau's appraisal allowance.

Satisfactory completion of portions of the required road construction, to reasonable points that can be easily identified in the road construction appraisal, shall be considered as completed road construction for the purpose of this section.

PART 5460—[AMENDED]

4. The authority citation for part 5460 is revised to read as follows:

Authority: 30 U.S.C. 601 *et seq.*; 43 U.S.C. 1181e.

5. Section 5461.2 is amended by revising the heading and paragraph (a) to read as follows:

§ 5461.2 Required payment schedule.

* * * * *

(a)(1) For sales of less than $500,000, installment payments shall be not less than 10 percent of the total purchase price. For sales of $500,000 or more, installment payments shall be $50,000.

(2) The first installment shall be paid prior to or at the time the authorized officer signs the contract. One-half of the first installment shall be held to satisfy the final payment under the contract and one-half of the first installment shall be released and applied to subsequent contract payment when either payment of not less than 60 percent of the total purchase price has

been made or road construction required by the contract, the value of which when combined with contract payments is no less than 60 percent of the total purchase price, has been completed.

(3) The second installment shall be paid prior to the cutting or removal of the material sold. Each subsequent installment shall be due and payable without notice when the value of material cut or removed equals the sum of all payments made up to that point, not including the first installment, or one-half of the first installment after the other one/half of the first installment has been released as provided in paragraph (2) of this section: *Provided, however,* That in the case of all contracts with terms 19 months or longer, the purchaser shall, by the first anniversary date, either pay no less than 20 percent of the total purchase price, or complete road construction required by the contract, the value of which when combined with contract payments is no less than 20 percent of the total purchase price. In the case of all contracts with terms 27 months or longer, the purchaser shall also, by the second anniversary date, either pay no less than 40 percent of the total purchase price or complete road construction required by the contract, the value of which when combined with contract payments is no less than 40 percent of the total purchase price.

(4) For the purpose of this section, the value of completed road construction shall be based on the Bureau's appraisal allowance.

Satisfactory completion of portions of the required road construction, to reasonable points that can be easily identified in the road construction appraisal, shall be considered as completed road construction for purposes of this section.

[FR Doc. 90–11144 Filed 5–11–90; 8:45 am]

BILLING CODE 4310–84–M

#2627

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 5400 and 5440

RIN 1004-AB66

[AA-230-00-4311-02; Circ. No. 2627]

Sales of Forest Products; General, and Conduct of Sales

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: The Bureau of Land Management is amending its regulations to remove the requirement for semiannual reports to Congress of negotiated timber sales over 250 M board feet in 5402.1 and to remove the reference to a bond accepted to secure payment of the first installment in 5441.1-1. The reporting requirements are no longer needed since the Congressional Reports Elimination Act of 1980 repealed the requirement for a semiannual report to Congress contained in the Material Sales Act, and the timber sale contract no longer has a provision for a bond to secure payment of the first installment.

EFFECTIVE DATE: July 5, 1990.

ADDRESSES: Inquiries or suggestions should be sent to: Director (230), Bureau of Land Management, Room 901 Premier Building, 1725 I Street NW., Washington, DC 202405.

FOR FURTHER INFORMATION CONTACT: Richard Bird (202) 653-8864.

SUPPLEMENTARY INFORMATION: Authority for the Secretary to sell timber without advertising is provided by the Act of July 31, 1947, 61 Stat. 681, as amended, 30 U.S.C. 602. In 1962, the Act of July 31, 1947 (Material Sales Act) was amended to authorize the sale of materials without advertising and competitive bidding if (1) the contract was for the sale of 250 M board feet or less of timber, or if (2) the contract is for the disposal of materials to be used in connection with a public works improvement program for a Federal, State, or local government where the public need will not permit the delay incident to advertising, or if (3) the contract is for the disposal of property for which it is impractical to obtain competition. This amendment also required that a semiannual report to be made to Congress of contracts over 250 M board feet made under clauses (2) and (3). The Congressional Report Elimination Act of 1980, Public Law 96-470, 94 Stat. 2237, repealed the requirement for the semiannual report to Congress. The final rule changes the regulations to reflect this change in the law by removing the requirement for a semiannual report to Congress.

When the timber sale regulations were amended on September 2, 1982 (47 FR 38697), the provision in § 5461.2(a)(2) for increasing the performance bond to secure payment of the delayed first installment was removed. Therefore, the reference to a bond to secure payment of the first installment in § 5441.1-1 is now removed. The payment referred to in this provision is the delayed payment of the first timber contract installment, which was formerly required by § 5461.2(a)(2) to be covered by a bond.

This rule makes no changes in the substantive or procedural provisions of part 3100 or part 3140. Therefore, in accordance with the provisions of 5 U.S.C. 553, this amendment is published as a final rule with the effective date shown above.

The principal author of the rule is Richard Bird, assisted by the staff of the Division of Legislation and Regulatory Management, Bureau of Land Management.

It is hereby determined that this rule does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C) is required.

The Department of the Interior has determined under Executive Order 12291 that this document is not a major rule, and under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) that it will not have a significant economic impact on a substantial number of small entities. Additionally, as required by Executive Order 12630, the Department has determined that the rulemaking would not cause a taking of private property.

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 et seq.

List of Subjects in 43 CFR Parts 5400 and 5440

Forests and forest products, Government contracts, Land Management Bureau, Public lands, Surety bonds.

For the reasons set out in the preamble, title 43, subtitle B, chapter II of the Code of Federal Regulations is amended as set forth below.

PART 5400—SALES OF FOREST PRODUCTS; GENERAL

1. The authority citation continues to read as follows:

Authority: 61 Stat. 681, as amended, 69 Stat. 367, 48 Stat. 1269, sec. 11, 30 Stat. 414, as amended, sec. 5, 50 Stat. 875; 30 U.S.C. 601 et seq., 43 U.S.C. 315, 423, 1181a 16 U.S.C. 607a, and 43 U.S.C. 1701 et seq.

§ 5402.1 [Removed]

2. Section 5402.1 is removed.

PART 5440—CONDUCT OF SALES

1. The authority citation continues to read as follows:

Authority: Sec. 5, 50 Stat. 875, 61 Stat. 631, as amended, 69 Stat. 367; 43 U.S.C. 1181e, 30 U.S.C. 601 et seq.

2. Section 5441.1-1 is revised to read as follows:

§ 5441.1-1 Bid deposits.

Sealed bids shall be accompanied by a deposit of not less than 10 percent of the appraised value of the timber or other vegetative resources. For offerings at oral auction, bidders shall make a deposit of not less than 10 percent of the appraised value prior to the opening of the bidding. The authorized officer may, in his discretion, require larger deposits. Deposits may be in the form of cash, money orders, bank drafts, cashiers or certified checks made payable to the Bureau of Land Management, bid bonds of a corporate surety shown on the approved list of the United States Treasury Department or any guaranteed remittance approved by the authorized officer. Upon conclusion of the bidding, the bid deposits of all bidders, except the high bidder, will be returned. The deposit of the successful bidder will be applied on the purchase price at the time the contract is signed by the authorized officer unless the deposit is a corporate surety bid bond, in which case the surety bond will be returned to the purchaser.

Dated: May 10, 1990.

Dave O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 90-12922 Filed 6-4-90; 8:45 am]

BILLING CODE 4310-84-M

#2628

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[illegible] CFR Part 3200

[illegible]004-AB53

[AA-610-00-4113-02; Circ. No. 2628]

Geothermal Resources Leasing

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: The interim rule amending 43 CFR part 3200, which was published at 54 FR 13884–13887 on April 6, 1989, is adopted as a final rule without change. The rule implements the Geothermal Steam Act Amendments of 1988 (Pub. L. 100–443) (Act) which provide geothermal operators new opportunities to obtain lease term extensions or to have leases continue in effect.

EFFECTIVE DATES: April 6, 1989.

ADDRESSES: Suggestions or inquiries should be sent to: Director (140), Bureau of Land Management, room 5555, Main Interior Building, 1849 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Richard Hoops, (702) 328–6368.

SUPPLEMENTARY INFORMATION: An interim rule amending the regulations at [illegible]FR part 3200 was published in the [illegible]ral Register on April 6, 1989, with a 3[illegible]day comment period. Only one public comment was received. The comment concerned § 3203.1–4(c)(2)(i–iii) which requires operators to choose, prior to obtaining a lease extension, whether to make annual payments in lieu of commercial production or to make significant expenditures toward development of their leases. According to this provision, once an operator chooses one of the options the operator must hold to that option for the period of extension. The party commenting requested that the rule be revised to allow operators to change options during the period of lease extension, i.e., to make payments in some years while making significant expenditures in others. Congress made it clear in the House of Representatives Report 100–664 that it did not intend operators to have the opportunity to change options once a lease extension had been granted. Therefore, the provision has not been revised.

Although the new definition of "produced or utilized in commercial quantities" could be interpreted to mean that lessees would have to pay minimum [illegible]lties for producible leases that had [illegible]ctually commenced production, the regulations at 43 CFR 3205.3–5(c) clearly provide that leases cannot be placed on minimum royalty status until the year beginning on or after actual commencement of production.

With regard to section 28 of the Act, which pertains to the approval of waivers, exceptions, or modifications to lease stipulations, it is Bureau policy that any change or variance to lease stipulations is an action requiring compliance with whatever laws are applicable and that no such modification will be approved if it would have a significant adverse effect on any listed thermal feature in a unit of the National Park System.

With respect to geothermal development in proximity to National Park System units, the Bureau has entered into an agreement with the National Park Service, the U.S. Geological Survey, and the U.S. Forest Service which identifies roles and responsibilities of each agency, and establishes procedures to ensure compliance with the Act.

Regarding a geothermal area of general public interest, a study of the Corwin Spring Known Geothermal Resource Area (north of Yellowstone National Park), as required under section 8 of the Act, will be carried out by the U.S. Geological Survey in consultation with the National Park Service. If the study concludes that geothermal activities would adversely affect Yellowstone National Park, measures will be taken to protect the thermal features of the park including, if necessary, purchase of private lease rights and/or withdrawal of Federal lands. At present, there are no geothermal leases in the Corwin Spring area, nor are any lease applications pending.

The principal authors of this final rule are Doug Koza of the Bureau's Washington Office, Richard Hoops of the Nevada State Office, and Leroy Mohorich of the Oregon State Office with assistance from Bob Kent and Mike Pool of the Washington Office.

It has been determined that this final rule does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and certifies this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Additionally, the final rule would not cause a taking of private property under Executive Order 12630.

The collection of information contained in this rule has been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1004–0160.

List of Subjects in 43 CFR Part 3200

Geothermal energy, Government contracts, Mineral royalties, Public lands-mineral resources, Reporting and recordkeeping requirements, and Surety bonds.

Under the authority of the Geothermal Steam Act of 1970, as amended (30 U.S.C. 1001–1027), part 3200, Group 3200, subchapter C, chapter II of title 43 of the Code of Federal Regulations is amended as set forth below:

PART 3200—GEOTHERMAL RESOURCES LEASING; GENERAL [AMENDED]

The interim rule amending 43 CFR part 3200, which was published at 54 FR 13884–13887 on April 6, 1989, is adopted as a final rule without change.

Dated: May 24, 1990.

Dave O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 90–15002 Filed 6–27–90; 8:45 am]

BILLING CODE 4310-84-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6978]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If FEMA receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the Federal Register.

EFFECTIVE DATE: The third date ("Susp.") listed in the fourth column.

Dated: September 4, 1990.
Valdas V. Adamkus,
Regional Administrator.

P[illegible]2—APPROVAL AND P[illegible]LGATION OF IMP[illegible]MENTATION PLANS

Title 40 of the Code of Federal Regulations, chapter I, part 52, is amended as follows:

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.770 is amended by adding new paragraph (c)(80) to read as follows:

§ 52.770 Identification of plan.

* * * * *

(c) * * *

(80) On October 15, 1987, the State submitted 325 IAC 8–2–13, Wood Furniture and Cabinet Coating, as a portion of its 1982 ozone plan, which gives provisions and requirements for controlling volatile organic compound (VOC) emissions from sources located in Clark, Floyd, Lake and Porter Counties. On November 16, 1988, the State submitted this rule recodified as 326 IAC 8–2–12, Wood Furniture and Cabinet Coating.

(i) Incorporation by reference.

(A) Title 326 Air Pollution Control [illegible] Indiana Administrative Code [illegible]–2–1, Applicability of rule; and 32[illegible]C 8–2–12, Wood furniture and cabinet coating, as published in the April 1, 1988, "Indiana Register" (IR), at 11 IR 2536 and corrected on March 1, 1989, at 12 IR 1394. Filed with the Secretary of State on March 10, 1988.

* * * * *

[FR Doc. 90–22676 Filed 9–24–90; 8:45 am]
BILLING CODE 6560–50–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 4700

[AA–250–90–4370–02; Circular No. 2629]

RIN 1004–AB63

Protection, Management, and Control of Wild Free-Roaming Horses and Burros; Private Maintenance; Supporting Information and Certification for Private Maintenance of More Than 4 Wild Horses or Burros

AGENCY: Bureau of Land Management, In[illegible]or.

[illegible] Final rule.

SUMMARY: This final rulemaking prohibits the use of power of attorney to adopt wild horses or burros when the adoption would result in the maintenance in one location of more than 4 wild horses or burros whose titles have not been conveyed by the United States. Public Law 92–195, as amended, commonly referred to as the Wild Free-Roaming Horse and Burro Act, limits the number of animals that may be adopted by any individual to not more that 4 per year unless "the Secretary determines in writing that such individual is capable of humanely caring for more than four animals * * *". Section 4750.3–3 of title 43 of the Code of Federal Regulations regulates approval of adoption applications where the applicant requests to adopt more than 4 animals per year or where more than 4 adopted wild horses or burros, title to which remains in the United States, are to be maintained in one location. The purpose of the rulemaking is to prohibit an individual from gaining control of more than 4 wild horses or burros by using one or more powers of attorney. The rule allows the use of power of attorney for transporting wild horses or burros on behalf of an adopter.

EFFECTIVE DATE: October 25, 1990.

ADDRESSES: Inquiries or suggestions should be sent to: Director (250), Bureau of Land Management, Premier Building, Room 901, U.S. Department of the Interior, 18th and C Streets NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: John S. Boyles, Chief, Division of Wild Horses and Burros, at the address given above; telephone (202) 653–9215.

SUPPLEMENTARY INFORMATION: A proposed rulemaking to amend the existing regulation on "Supporting information and certification for private maintenance of more than 4 wild horses or burros" was published in the Federal Register on February 6, 1990 (55 FR 3989). Comments were invited for a period of 30 days ending March 8, 1990, during which period two comments were received, one from a private individual, and one on behalf of two humane organizations.

Both comments supported the intent of the proposed rulemaking. One comment expressed general support for the proposed rule. The other comment raised additional issues. That comment expressed concern that the proposed rulemaking did not address the matter of enforcement. Enforcement is not addressed in the proposed rulemaking because the rule merely states a limitation on the circumstances under which the BLM will approve adoptions where four or more animals will be maintained in one location or where four or more animals will be transported by an individual on behalf of an adopter. If an individual circumvents or attempts to circumvent this provision, the Bureau of Land Management will apply the enforcement provisions found in Subpart 4760—Compliance, and Subpart 4770—Prohibited Acts, Administrative Remedies, and Penalties.

The comment urged that BLM further define its enforcement strategy. Such a definition is not appropriately placed in the regulations, but rather is properly addressed in policy statements and program guidance.

The comment also noted that the proposed rulemaking does not define the term "commercial use." The proposed rule makes no reference to commercial use, and therefore a definition would be unnecessary and beyond the scope of the rule.

The proposed rule is adopted without change.

The principal author of this final rule is John S. Boyles, Chief, Division of Wild Horses and Burros, assisted by the staff of the Office of Legislation and Regulatory Management, Bureau of Land Management.

It has been determined that this rule does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined under Executive Order 12291 that this document is not a major rule, and under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that it will not have a significant economic impact on a substantial number of small entities. Additionally, as required by Executive Order 12630, the Department has determined that the rule would not cause a taking of private property.

The information collection requirements contained in § 4750.3–3 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1004–0042.

List of Subjects in 43 CFR Part 4700

Advisory committees, Aircraft, Intergovernmental relations, Penalties, Public lands, Range management, Wild horses and burros, Wildlife.

Under the authority of the Act of September 8, 1959 (18 U.S.C. 47), the Act of December 15, 1971, as amended (16 U.S.C. 1331–1340), the Act of October 21, 1976 (43 U.S.C. 1701 *et seq.*), and the Act

of June 28, 1934, as amended (43 U.S.C. 315), part 4700, subchapter D, chapter II, title 43 of the Code of Federal Regulations is amended as set forth below.

PART 4700—[AMENDED]

1. The authority citation for part 4700 continues to read as follows:

Authority: Act of Dec. 15, 1971, as amended (16 U.S.C. 1331–1340), Act of Oct. 21, 1976 (43 U.S.C. 1701 *et seq.*), Act of Sept. 8, 1959 (18 U.S.C. 47), Act of June 28, 1934 (43 U.S.C. 315)

2. Section 4750.3–3 is amended by removing the word "for" the first time it appears in the introductory text of paragraph (a) and replacing it with the words "to adopt", removing paragraph (b)(7), redesignating paragraph (b) as paragraph (c), by adding a new paragraph (b) and revising newly designated paragraphs (c) introductory text, (c)(3), (c)(5), and (c)(6) to read as follows:

§ 4750.3–3 [Amended]

* * * * *

(b) The Authorized Officer will not approve an adoption in which the Private Maintenance and Care Agreement will be signed by an individual holding the power of attorney of the adopter where the adopted animals will be maintained in groups of more than 4 untitled wild horses or burros in one location.

(c) Any individual holding one or more powers of attorney to sign the Private Maintenance and Care Agreement(s) and who will transport more than 4 wild horses or burros on behalf of adoption applicants shall provide the following:

* * * * *

(3) Names, addresses, and telephone numbers of all applicants represented by a power of attorney submitted with the request.

* * * * *

(5) A distribution plan for delivering the animals to their assigned adopters; and

(6) Names, addresses, and a concise summary of the experience of the individuals who will handle the adopted animals during transportation and distribution.

James M. Hughes,

Deputy Assistant Secretary of the Interior.

[FR Doc. 90–22667 Filed 9–24–90; 8:45 am]

BILLING CODE 4310–84–M

43 CFR Public Land Order 6802

[NV–930–00–4214–10; N–50250)

Withdrawal of Public Land To Maintain the Physical Integrity of the Subsurface Environment, Yucca Mountain Project; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws approximately 4,255.50 acres of public land from the mining and mineral leasing laws for a period of 12 years in order to maintain the physical integrity of the subsurface environment to ensure that scientific studies for site characterization by the Department of Energy at Yucca Mountain are not invalidated or otherwise adversely impacted.

EFFECTIVE DATE: September 25, 1990.

FOR FURTHER INFORMATION CONTACT: Mary Clark, BLM, Nevada State Office, P.O. Box 12000, Reno, Nevada 89520, 702–785–6530.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following described public land is hereby withdrawn from location under the United States mining laws (30 U.S.C. ch. 2), and from leasing under the mineral leasing laws, in order to maintain the physical integrity of the subsurface environment to ensure that scientific studies for site characterization by the Department of Energy at Yucca Mountain are not invalidated or otherwise adversely impacted:

Mount Diablo Meridian

T. 13 S., R. 49 E. (Pro. Dia. No. 44),
Secs. 7, 8 and 9;
Secs. 10 and 15, except those lands withdrawn by PLO 2568;
Secs. 16 and 17;
Sec. 20, NE¼;
Sec. 21, N½, N½S½;
Sec. 22, N½, N½S½, except those lands withdrawn by PLO 2568.

The area described contains approximately 4,255.50 acres in Nye County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the land under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining and mineral leasing laws. BLM will obtain written concurrence from the Department of Energy prior to issuing any use authorizations on the withdrawn lands.

3. The withdrawal will expire 12 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be extended.

Dated: September 17, 1990.

Dave O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 90–22615 Filed 9–24–90; 8:45 am]

BILLING CODE 4310–HC–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 88–2 Phase I; DA 90–1201]

Miscellaneous Rules Relating to Communications Common Carriers

AGENCY: Federal Communications Commission.

ACTION: Final rule; petitions for reconsideration.

SUMMARY: On August 6, 1990, five Bell Operating Companies (BOCs) filed petitions seeking partial reconsideration and/or clarification of the Commission's *BOC ONA Amendment Order*, Memorandum Opinion and Order, Filing and Review of Open Network Architecture Plans, CC Docket No. 88–2, Phase I, published July 3, 1990 (55 FR 27468). The BOCs that filed petitions are BellSouth, NYNEX, Pacific Bell, Southwestern Bell, and US West.

DATES: (Oppositions to these petitions must be filed on or before October 25, 1990. Replies to an opposition must be filed within 15 days after the time for filing oppositions has expired).

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Peggy Reitzel, Policy and Program Planning Division, Common Carrier Bureau, (202) 632–4047.

SUPPLEMENTARY INFORMATION:

Pleading Cycle Established for Oppositions and Replies to Petitions for Partial Reconsideration and/or Clarification of BOC ONA Amendment Order

[CC Docket No. 88–2, Phase I]

Released: September 17, 1990.

On August 6, 1990, five Bell Operating Companies (BOCs) filed petitions